Office-Supreme Court, U.S.
FILED
NOV 25 1966
JOHN F. DAVIS, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1966

No. 800

BEN W. FORTSON, as Secretary of State of the State of Georgia, and his successor in such office, as such,
Appellant

v.

JOHN MORRIS and FLORENCE ROBIN, for themselves, jointly and severally, and for all others similarly situated,
Appellees

BEN W. FORTSON, JR., Individually, and as Secretary of State of Georgia, *Appellant*

v.

LARRY G. JUSTICE, MRS A. P. BEALL, MRS. VIRGINIA BUDD, DR. YANCEY P. CARTER, JR., NOBLE F. COLLINS, GLEA GRAY, BRYAN HURST, DR. BENJAMIN E. MAYS, CARL PORTER, CHARLES SLIGH, DR. HERBERT TYLER, and EVERETT WILLIAMS, *Appellees*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION

BRIEF OF APPELLEES JOHN MORRIS AND FLORENCE ROBIN

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF GEORGIA, ATLANTA DIVISION

Brief of Appellees John Morris and Florence Robin

ARGUMENT

The Constitution of Georgia, written but four years after *United States* v. *Classic,* 313 U.S. 299 (1941), was adopted in a one-party state in a racially segregated time. Few even then could see the coming of change in economic and racial matters, in the emergence of a second political party and, occasionally, a

third party or independent movement. But change, revolutionary change, was coming. The seeds of revolution were being planted in the law.

Classic, supra, held that the right to vote in primaries and to have votes so cast, counted, was a right "secured by the Constitution." 313 U.S. at 307.

Brown v. *Board of Education of Topeka, Kansas,* 347 U.S. 483 (1954), ended a long struggle—and began a new one—to open other meaningful doors of American life to Negroes.

Baker v. *Carr,* 369 U.S. 186 (1962), *Gray* v. *Sanders* 372 U.S. 368 (1963) and *Reynolds* v. *Sims,* 377 U.S. 533 (1964), broke ground for electoral reform.

Each of these decisions opened the gates for democratic revolution, revolution protected, indeed guaranteed, by the First, Fourteenth, and Fifteenth Amendments.

The South, slowly at first, then more quickly, became a land of ferment, a frontier, a battleground of law against the order—new law against a harsh old order.

In Georgia, in 1966, the armies of this revolution met in the political arena. The results?—a draw.

THE ELECTIONS OF 1966

Lester G. Maddox and Ellis G. Arnall actively campaigned for the Democratic nomination for Governor. In the first primary election held September 14, 1966, Messrs. Arnall and Maddox ran first and second in a field of six. Mr. Arnall received 231,480 votes. Mr. Maddox received 185,672 votes (R. 141) (Requests for Admissions, No. 6, p. 3).

Prior to the runoff primary of September 28, 1966, Mr. Arnall and his Democratic supporters accused

Mr. Callaway and the State's Republican leadership of urging that Republicans vote in the Democratic Primary. The purpose of this scheme was said to be the nomination of Mr. Maddox. The theory behind the plan was that Mr. Maddox would be easier for Mr. Callaway to defeat in the General Election.[1]

And according to observers Republicans did enter the Democratic runoff primary. Mr. Maddox emerged the victor with a vote of 443,055 votes to Mr. Arnall's 373,004. (R. 141-2) (See e.g. "If Not Write-Ins, Then What?", The Atlanta *Constitution*, November 14, 1966, p. 4 (R. 221) contained herein as Appendix C, *post*, pp. 77a-78a).

Mr. Callaway did not seek nomination via the primary route. He became the Republican nominee by petition (R. 142) (Request for Admission No. 8, p. 4).

Immediately following the Democratic primary election the ranks of that party split. Intensity of feeling was implicit in the remarks of the Mayor of the State's largest city, Atlanta.

"It is deplorable that the combined forces of ignorance, prejudice, reactionism and the duplicity of many Republicans voters have thrust upon the State of Georgia Lester Maddox, a totally unqualified individual as the Democratic nominee for Georgia," said Ivan W. Allen. "The seal of the great State of Georgia lies tarnished," he continued. "The wisdom, justice, and moderation espoused by our founding fathers must not be surrendered to the rabble of prejudice, extremism, buffoonery and incompetency."[2]

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[1] See e.g., The Atlanta *Constitution*, September 8, 1966, p. 11, September 22, 1966, p. 28.

[2] The Atlanta *Journal*, September 29, 1966, p. 1; The Atlanta *Constitution*, September 30, 1966, p. 1.

Four days later, Charles Longstreet Weltner, a member of the House of Representatives from Georgia's Fifth Congressional District, followed suit. Mr. Weltner had won renomination to Congress. He resigned that nomination saying, ". . . While I cannot violate my oath, neither can I violate my principles. I cannot compromise with hate."[3] He too would write-in.

On October 4, 1966, many Georgians, rejecting the nominees of both major parties, met to consider a candidate for whom they might vote.[4] Their right to cast write-in ballots could not be disputed.[5] A commit-

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[3] The Atlanta *Journal*, October 3, 1966, p. 1; The Atlanta *Constitution*, October 4, 1966, p. 1.

[4] The Atlanta *Constitution*, October 5, 1966, p. 1; The Atlanta *Journal*, October 5, 1966, p. 1.

[5] See Georgia Election Code Sections 34-1206 (c) (d) (g), 34-1220 (d) (e), 34-1224 and 34-1315 (d), the latter of which provides, in part, "An elector may, at *any* election, vote for any person for any office . . . by a write-in ballot containing the name of such person . . ." [Emphasis supplied]. This right, under Georgia law, is constitutional in nature. *Stewart* v. *Cartwright*, 156 Ga. 192, 197, 118 SE 859 (1923). See also: Note: *Ballot—Voting Machine—Right of Voter to Write-In Name of Candidate*, 6 George Washington Law Review 540 (1937). Regarding the general nature of the right to cast write-in ballots in other states, see e.g., *Jackson* v. *Norris*, 195 A. 576, 586 (Md. 1937): "For this precious right to reject, which is implicit in his right to choose, there is no equivalent nor constitutional substitute."

People v. *President of Wappingers Falls*, 144 N.Y. 616, 620, 39 NE 641, 642 (1895): "The constitution confers upon every citizen meeting the requirements specified therein the right to vote at elections for all officers that are elective by the people, and there is no power in the legislature to take away the right so conferred.

Howell v. *Bain*, 156 P. 2d 576, 582 (Ore. 1945): "A voter has the constitutional right to vote for whomever he pleases and, if the names of the candidates on the printed ballot do not meet with his

tee, Write-in Georgia, was organized, established headquarters and began the campaign for Mr. Arnall. On October 9, 1966, they organized a mass rally.[6] They had no active candidate—Mr. Arnall would neither publicly encourage nor discourage the movement—but the campaign was underway.

On October 19, 1966, legal skirmishing began. A committee of lawyers from Write-In Georgia met with Georgia's Secretary of State seeking a ruling from him on several matters. One of their questions concerned the applicability of Section 34-1514 of the Georgia Election Code which seemed to them to provide for a runoff election in the event no one received a majority vote in the General Election. On October 21, 1966, Georgia's Attorney General advised the Secretary of State, in part, as follows (R. 142, 145-8) (Requests for Admissions, No. 9, p. 4):

> The last question posed was: "Is the provision of Code Section 34-1514, providing for a runoff election, in instances where no candidate receives a majority of the votes cast, on the fourteenth day after the day of the holding of the election, authorized by the provisions of Article V, Section I, Paragraph II, of the Constitution, which per-

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approval, he may 'write in' the name of the person whom he desires to have elected to the office."

McCrary on Elections, 4th Ed., pp. 508-509, Sec. 700 (1897). "Statutes which deny the voter this privilege [the right to cast write-in ballots] are in conflict with the constitutional provision guaranteeing the right of suffrage to every citizen possessing the requisite qualifications and are void. Legislatures may provide for the printing of an official ballot and prohibit the use of any others, but the legislature cannot restrict the elector in this choice of candidates, nor prohibit him from voting for any other than those whose names appear on the official ballot."

[6] The Atlanta *Constitution*, October 10, 1966, p. 1; The Atlanta *Journal*, October 10, 1966, p. 1.

mits the General Assembly to fix the date on which the election of the Governor shall take place?" Article V, Section I, Paragraph II, of the Georgia Constitution of 1945, provided that the first election for Governor under the Constitution would be held on Tuesday after the first Monday in November of 1946, and that an election should take place every four years, thereafter, on said date, until another date be fixed by the General Assembly. The Georgia Election Code enacted in 1964 made no change in the date of the November election for the Office of Governor. See Code Section 34-802. Code Section 34-1514, relied upon by those who propounded the question to you, relates to a "runoff election."

Moreover, Paragraphs III and IV of Section I of Article V of the Constitution are specific as to the transmission of the returns for the election of Governor and as to what happens in the event no person receives a majority of the votes cast for Governor. Although the *unofficial* results of an election are made known, via the news media, shortly after the close of the polls, the Constitution provides that the official returns for the election of the Governor shall be sealed up by the managers, addressed to the President of the Senate and Speaker of the House of Representatives, and transmitted to you, and that you, without opening said returns, shall lay them before the Senate on the day after the two Houses shall have been organized. Those returns are to be opened and published before a joint session of the General Assembly and if no person shall have a majority, "then from the two persons having the highest number of votes, who shall be in life, and shall not decline an election . . . the General Assembly shall immediately, elect a Governor viva voce" by a majority of the members present.

Therefore, any construction of Code Section 34-1514 as an effort to change the date on which the election of the Governor occurs, would contravene

the specific provisions of Paragraphs III and IV, Section I, Article V, of the Georgia Constitution. Thus, it is my official opinion that the answer to the fourth question should be "no."

Very truly yours,

/s/ ARTHUR K. BOLTON
Attorney General

Thus, as far as the State of Georgia was concerned the State's Constitution governed. Section 34-1514 of the Georgia Election Code did not. Write-In-Georgia's lawyers were wrong. There would be no runoff. The General Assembly would decide.

Subsequently, in hundreds of newspaper articles,[7]

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[7] Appendix B, hereto, consists of a copy of the Motion for Preliminary Injunction filed by Appellees Morris and Robin and is a part of the record herein. Pages 21a, et seq. of Appendix B consist of reproductions of articles from newspapers in the Atlanta area which related to the question of legislative selection of a Governor if no majority vote was obtained in the General Election of November 8, 1966. This Appendix does not contain all of the articles in those newspapers which relate to this subject.

In *Davis* v. *Schnell*, 81 F. Supp. 872 (S.D. Ala. 1949) aff'd 336 U.S. 933 (1949), the District Court in ascertaining the intention of the Legislature and the electorate considered statements in the *Alabama Lawyer* (a publication of the Alabama Bar Association) and said ". . . The *Alabama Democrat*, a campaign document in the form of a newspaper published in support of the adoption of the Boswell Amendment consisted in its entirety of arguments urging the voters to adopt the Amendment for the purpose of restricting voting by Negroes." . . . Similarly, an editorial of the *Talladega Home*, reproduced in said document, asked the question: "What is the Boswell Amendment?" and answered the question by saying, "It is a measure designed simply and solely to enable registrars legally to hold down the number of Negro registrants." (Ibid. p. 880). See also *Sheppard* v. *Maxwell*, 384 U.S. 333, 351 (1966) and cases cited therein. "At the same time, we did not consider dispositive the statement of each juror that he would not be influenced by the news articles, that he could decide the case only on the evidence of record, and that he felt no prejudice against petitioner as a result of the articles." [Citations omitted]

on radio and television, Georgia voters were told that in the event no candidate obtained a majority vote the General Assembly would select the Governor. (R. 192 et seq.) (See Appendix B, *post,* pp. 21a, et seq.)

This ruling materially assisted Mr. Callaway. The thesis of many of his supporters was that a write-in vote was a vote for Mr. Maddox since the malapportioned General Assembly was controlled by Democrats, each of whom took the same loyalty oath taken by Mr. Weltner, none of whom refused to seek election.

The crux of the Republican argument was that Negro and white liberal voters were out-of-luck. They had but two practical choices, Messrs. Maddox and Callaway, and, even if to those voters the effective option seemed to be a particularly " 'grisly', hard, Hobson's choice,"[8] their man, Mr. Callaway, was the less grisly.

Thus the General Election was held on November 8, 1966, under circumstances which would have misled the most intelligent of voters. The state constitutional provision which was contemplated valid was ruled void. The voters, indeed, the candidates themselves, were deceived as to the law. That the deception was not a part of a venal master plan makes its existence as a fact, no less certain.[9]

Also on October 19, 1966, an action was filed in the United States District Court for the Northern District

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[8] cf. *Whitus* v. *Balkcom,* 333 F. 2d 496, 499 (1964) cert. den. 379 U.S. 931 (1964).

[9] See Note: *Avoidance of an Election or Referendum When The Electorate Has Been Misled,* 70 Harvard Law Review 1077 (1957) cf. Section 34-1708 (d) Georgia Election Code. Also cf. *Crowe* v. *Bryan,* 215 Ga. 661, 113 SE 2d 104 (1960)

See also Note: *Annulment of a General Election,* 18 Mod. L. Rev. 495 (1955).

of Georgia (*Morris et al.* v. *Fortson, et al.*, D.C. N.D. Ga., CA-10483). There the District Court declared unconstitutional and in violation of the Voting Rights Act of 1965, Act No. 399 of the Georgia General Assembly, General Session, 1966 (Georgia Laws 1966, pp. 185-186) which limited the assistance illiterates might receive in casting their ballots. The court retained jurisdiction "for the purpose of . . . post-election matters . . . having to do with the tabulation of such write-in ballots as are cast."

Appellees are advised that attorneys for Write-In Georgia who have received hundreds of complaints regarding the casting and counting of write-in ballots intend to move for such a tabulation in the District Court. The Secretary of State of Georgia has called a public hearing regarding election complaints for December 1, 1966, to be held in the State House of Representatives.

THE GEORGIA ELECTION CODE WAS NOT WRITTEN WITH THE GEORGIA CONSTITUTION OF 1945 IN MIND

In 1964 the General Assembly of Georgia embarked on two rather ambitious projects. They wrote a new state constitution (Georgia Laws, Ex. Sess., May-June, 1964, pp. 234 et seq.) and adopted the Georgia Election Code. But legislative ambitions were thwarted when the District Court forbade a vote on the new constitution due to the malapportionment of the General Assembly. See *Fortson* v. *Toombs*, 379 U.S. 621 (1965). Whatever the General Assembly's intention regarding the Georgia Election Code might have been, that Code must be construed with the Constitution of Georgia of 1945 rather than the proposed Constitution which was never adopted by the people.

ARTICLE V, SECTION I, PARAGRAPH IV OF THE CONSTITUTION OF GEORGIA IS UNCONSTITUTIONAL ON ITS FACE AND IN ITS APPLICATION

The rule of *Gray* v. *Sanders,* 372 U.S. 368 (1963), envelopes this case. Two hundred and five House seats and fifty-four Senate seats make up the General Assembly.[10] The apportionment of those seats has been held unconstitutional, but the General Assembly has until May 1, 1967, to further apportion itself in accordance with the mandate of *Reynolds* v. *Sims, supra.* (*Toombs* v. *Fortson,* 241 F. Supp. 65 (1965), aff'd. 384 U.S. 210 (1966))

In *Gray* the unit system applied to the selection of nominees. In this case the unit system applies to the

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[10] Forty-six members of the Democratic Party, seven members of the Republican Party and one Independent were elected to the Georgia Senate in the November 8, 1966, General Election. One hundred eighty-three Democrats and twenty-one Republicans were elected to the Georgia House. A runoff election was held on November 22, 1966, to fill a House Seat. It appears that the runoff remedy provided by Section 34-1514 of the Georgia Election Code is no longer available. A runoff ". . . election shall be held between the two candidates receiving the highest number of votes, on the 14th day after the day of holding of the first . . . election, unless such runoff date is postponed *by court order.*" [Emphasis supplied] (ibid) No order of any court, state or federal, barring the holding of a runoff election was entered. Co-Appellees, *Justice,* et al. requested such an election. Appellees *Morris* and *Robin* requested that a special election be held. The District Court acted on neither request. No appellee nor the State specifically requested an order barring a runoff election. The issuing of the injunction requested by Appellees *Morris* and *Robin* would have necessarily excluded the runoff remedy. The time for a runoff election to have been held having expired, it seems that the Section 34-1514 remedy is no longer available and, assuming the applicability of the Georgia Election Code, the Section 34-1515 special election remedy applies. It should be noted that the District Court discussed this matter with counsel. (R. 83-4) (Transcript of Hearing, pp. 83-84). But, no "court order" was issued.

final step in the election process, the General Election. Since this case involves the final rather than a preliminary step in the election process, the thesis of *Gray* is all the more applicable. When the poll curtain opens in a general election the voter has made his final decision. There is no more an opportunity to cast a write-in ballot, nominate a third or fourth party candidate, or otherwise reject the nominees of the major political parties. (Cf. *United States* v. *Classic, supra)*

The thrust of *Gray* v. *Sanders, supra,* is—once the class of voters is selected each individual voter is entitled to cast an undiluted vote, a vote equal to each other vote cast in the overall area from which the election takes place, in this instance, the state; that one vote so cast by that one person is not to be diluted, weighted or denied by any system of representative filtration.

But, under the challenged Georgia constitutional provision the General Assembly may select for Governor a man who received not merely less than a majority of the votes cast but, indeed, the man who received less than a plurality of the popular vote—*the number two man.*

This procedure simply cannot jibe with a one-person, one-vote concept of democratic self-government. *Gray* rejected the Federal analogy as did *Reynolds* v. *Sims, supra.* On the state level the electoral college principle cannot be used.

To further compound the wrong of Georgia's constitutional system there is no requirement that members of the General Assembly cast their votes for the candidate who received at least a plurality of the

votes in his own district. The member of the General Assembly may vote for the candidate who ran second. He may absent himself and cast no vote at all, thereby depriving voters in his district of any voice at all in the selection process. Cf. *Bond et al.* v. *Floyd, et al.*, Oct. Term, 1966, No. 87. Even if present and voting for the candidate who received the plurality or majority vote in his district, his vote deprives those who voted for the minority candidate of their right to vote and have their votes counted. *United States* v. *Classic, supra.* No matter how he votes he is totally irresponsible to his constituency due to voice voting.

To further compound the offense of unit selection here, there is the problem of the apportionment of the General Assembly, an apportionment already declared to be violative of the Equal Protection Clause.[11]

To allow the selection of Georgia's Governor by representatives of a minority of Georgia's citizens who could select the candidate who finished second in a general election and disregard the will of at least a

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[11] *Toombs* v. *Fortson*, 241 F. Supp. 65 (1965) aff'd 384 U.S. 210 (1966). The denial of a speed-up order regarding the apportionment of the General Assembly does not indicate approval of that apportionment for selection of a Govenor. See *Fortson* v. *Toombs, infra.* There the District Court refused to allow a vote on a proposed new constitution for Georgia. That Constitution proposed by a malapportioned General Assembly provided for the proposal of amendments by later General Assemblies by a two-thirds vote. Although Georgia's General Assembly must be properly apportioned by May 1, 1967, to allow the present General Assembly to select a Governor for a term of four years would place the power of the veto over the head of the properly apportioned General Assembly. (Article V, Section I, par. XVI, Constitution of Georgia (Section 2-3015 Georgia Code Annotated) See also remarks of the District Court in this case at R. 28-29 (Transcript of Hearing, pp. 28-29).

plurality of voters in the state-at-large and in their own districts and totally disregard the votes of their own constituents with whom they disagree, completely emasculates the Equal Protection Clause. Georgia's system thwarts the will of at least a plurality of voters, as surely as does Kentucky's system of selecting a Governor by lot in the event of a tie. Constitution of the State of Kentucky, Section 70.

At least in Kentucky some voters have a fifty-fifty chance. But, in Georgia the deck is stacked in favor of minority rule. No matter how the electorate plays its hand some voters are lost in the shuffle. No electoral system which permits this can survive constitutional scrutiny.

THIS COURT SHOULD PROVIDE GUIDANCE FOR THE COURT BELOW OR FOR THE STATE OF GEORGIA UNDER WHICH A REMEDY MAY BE SELECTED

In *Reynolds* v. *Sims,* 377 U.S. 533, 578 (1964), after expressing a desire for the development of the law on a case-by-case basis, this Court said: "Thus we proceed to state here only a few rather general considerations which appear to us to be relevant." The Court then offered those considerations for the Legislatures of the States and the Courts of the United States. 377 U.S. at 578-581. Those "general considerations" served the nation well. For despite the existence of a "political thicket," a thicket so dense that prior to 1964 many men could not see in it any rays of light, there has been little difficulty in finding solutions for apportionment problems.[12]

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[12] Cf. *Brown* v. *Board of Education of Topeka, Kansas,* 349 U.S. 294, 301 (1955). The words "deliberate speed" have often resulted in deliberate defiance, little speed.

In *Miranda* v. *Arizona,* 384 U.S. 436, 444 (1966), this Court stated ". . . The following measures are required." It then gave guidance to those affected by the decision.

This case is charged with emotion. Upon its results the highest political office in Georgia will be decided. There is a need for rapid adjudication of the rights of all parties. The situation presents a host of opportunities for litigation, some of which may find its way back to this Court. Thus, this Court should either fashion a remedy now or, at least, set the style by which the remedy should be fashioned.

Here each party seeks a remedy and, at least implicitly, guidance.

Appellees in *Justice* et al. seek a runoff election under the provisions of Section 34-1514 of the Georgia Election Code.[13] Appellees in *Morris* seek a special election under the provisions of Section 34-1515 of the Georgia Election Code.[14] The Court below sought

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[13] In their complaint and in briefs below they sought the ordering of a runoff election. The District Court in footnote 2 of its opinion, Appendix A hereto, *post,* p. 6a, refused to consider the question and entered no "court order" to halt the runoff election, nor was it requested to do so. See also R. 83 (Transcript of Proceedings, p. 83) and the *Brief in Opposition to Application for a Stay* of Co-Appellees, *Justice* et al. See also their *Request for Emergency Hearing.*

[14] See *Motion for Preliminary Injunction* of Appellees *Morris* and *Robin* (R. 184) Appendix B *post,* p. 11a.

that the state solve the problem itself.[15] And the state obviously needs to know what measures are required in this situation.[16]

NEITHER THIS COURT NOR THE COURT BELOW NOR ANY STATE COURT, STATE OFFICIAL, OR LEGISLATIVE BODY SHOULD BE ALLOWED TO FASHION A REMEDY THAT WOULD BIND THE HANDS OF THE GEORGIA ELECTORATE

There has been a complete failure of election in Georgia. Georgia citizens relied upon the constitutionality of—and cast their ballots under—the Constitution of Georgia. The declaration of the unconstitutionality of Article V, Section 1, Paragraph IV (Sec. 2-3004, Georgia Code Annotated) voids the General Election. The Georgia electorate will have been misled, not by the deliberate acts of the candidates, not by the communications media, not by the Attorney

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[15] Judge Bell: "That is the simple part of the case. The hard part is the remedy. That is what you, of course, don't want to discuss, and I am not going to suggest that any more, because you can put in your brief anyway, if you want to, but that is what you really ought to be giving some serious thought to, the remedy."
Judge Tuttle: "... the court may, since we would like to get out of this thicket, we hope that having expressed the tentative view your clients may rethink their attitudes and may make it unnecessary for us ever to determine ourselves what the remedy should be, because you may take action yourself."
Judge Bell: "Formulate your own remedy."
Judge Tuttle: "That would dispose of the matter."
Judge Morgan: "And be in the interest of time."
(R. 79-80) (Transcript of Proceedings, pp. 79-80)
[See also R. 81-82, *Transcript of Proceedings*, pp. 81-82]

[16] See R. 238-239, *Notice of Appeal*, III, (3). See also *Application for Stay*, Sections 9-10, pp. 6-7.

General of Georgia, but by the State's Constitution itself.[17]

The effect of this deception might be disputed. But that there was an effect is clear. How influential the knowledge that the election would be ultimately decided by the General Assembly was cannot be known. But it may very well be that one of the two candidates of the major political parties might not have been one of the two high men in the November 8, 1966 General Election. Thus to order—or for that matter, allow—a runoff election between Messrs. Callaway and Maddox while barring write-in votes would result in a substantial deprivation of the right to vote. To order or allow exercise of the effective right of nomination by a court, state or Federal, the State's Attorney General, the State's Secretary of State, or the State's General Assembly would constitute a devastating blow to the right of free suffrage, a nomination system akin to appointment, a selection system akin to that of some foreign lands where the right to vote is protected, only the choice restricted. The people of Georgia—all of them, not merely those who cast write-in ballots—are entitled to an untrammelled vote for governor, a vote not influenced by deception in the law.

Whether or not write-in votes should be allowed in a runoff from a special election constitutes a totally separate question from whether or not they should be allowed in a runoff from the November 8, 1966, General Election. The circumstances surrounding the November 8, 1966, General Election make it clear that that election must not be used as a sort of nominating

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[17] See footnote 9, *infra*, p. 8.

procedure for a runoff without the right to cast write-in votes.

This Court through *Reynolds* v. *Sims, supra,* and *Gray* v. *Sanders, supra,* emphasized the majesty of one man's one vote. The personal nature of the right to vote and the guarantee of *Classic* that that vote be counted in the nominating process are clear. This Court also emphasized the majesty of majority rule and the right of the majority not be deprived by law of the right to govern.[18]

To many voters the nominees of the major political parties often offer an echo, not a choice. For example, until recently, in the south all major political candidates were publicly committed to a policy of racial segregation. That policy, although contrary to the Constitution of the United States when involving governmental facilities, places Negro citizens, guaranteed the right to vote by the Fifteenth Amendment of the Constitution of the United States, in the unenviable position of being constantly required to cast their ballots in each election for the lesser of two evils; the candidate who, to them, is the less grisly. The casting of a ballot by an American citizen is the most important expression of opinion he utters. He is catalogued and

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[18] Although the Federal analogies are sometimes inapposite in voting and reapportionment cases, *Gray* v. *Sanders, supra; Reynolds* v. *Sims, supra,* it should be noted that the President of the United States—the occupant of the most powerful office the world has ever known, an office which with but one mistake of judgment could end life on earth,—is not necessarily selected by a majority vote. Thirty-six states do not require that their chief executives be elected by a majority vote. In eleven states the law is unclear. Only three states, Georgia, Mississippi, and Vermont require this. See Appendix D, Brief of Appellants, herein which consists of a compendium of state law on this point.

analyzed and his behavior is predicted. Early on election evening he is told for whom he voted and why and by how much. But regardless of what he is told, only he knows how and why he voted as he did. And by the casting of his ballot he becomes personally involved and responsible for the policies of his government. For the American voter there can be no denial of participation in the acts of government.

The only rationale for majority rule while allowing the minority to reject those candidates who have access to the ballot is that the individual shall not have thrust upon him the choice of candidates for whom he may vote.

The voters' right to reject does not necessarily conflict with the majority's right to elect. For instance, in Georgia the reason for the write-in campaign was the unfairness of the apparent Republican cross-over, the nomination of both candidates by Republican voters. It was this kind of "one man, two vote rule" for Republicans that prompted the write-in campaign in the first place. A free and open election and a runoff from that special election would cure that disease.

THE MOST APPROPRIATE REMEDY IS THAT OF A SPECIAL ELECTION TO BE HELD EITHER UNDER EXISTING GEORGIA STATUTES OR A NEW STATUTE TO BE ADOPTED BY THE GENERAL ASSEMBLY OR UNDER AN ORDER OF THIS OR THE LOWER COURT TO THE DEFENDANT SECRETARY OF STATE

"[A]n election that arises from some exigency or special need outside the normal routine; . . ." is the statutory definition of the words "special election" (Sec. 34-103 (ab) Georgia Election Code). That the

failure of election November 8, 1966, fits this definition seems hardly questionable.[19]

A special election under the provisions of Section 34-1515 of the Georgia Election Code would leave the people of Georgia free to determine whom they desire to serve them as Governor. In the event no majority vote is obtained in that election, a runoff might then be held. Any restriction on the right to cast write-in votes in a runoff from a special election must be approached with caution. But it is far better that restrictions be made at that stage of the election process rather than at an earlier stage where the very candidacy of the men running for office is suspect. The people's right to elect their highest state officer would be retained.

CONCLUSION

The judgment of the Court below should be affirmed and the case remanded for future proceedings not inconsistent with the opinion of this Court. The opinion of this Court should contain words of guidance for the lower court regarding the remedy to be utilized either by that court or by Georgia, itself. That guidance should indicate that the November 8, 1966, General

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[19] Georgia's General Assembly provided for a special election for Governor in the event a vacancy occurred in the office ". . . by death, resignation, or otherwise . . ." (Section 40-102, Georgia Code Annotated). In light of Article V, Section I, Para. VII, (Sec. 2-3007, Georgia Code Annotated) providing for the assumption of office by the Lieutenant Governor, this section appears to have been superseded. But the codifier notes that this section has not been treated as repealed. Repealed or not there is no contention that, as a matter of state law, this section applies in this situation. Nor does it apply as a matter of fact. Governor Sanders has indicated that he will not resign until his successor has been "chosen."

Election should in no way determine for whom the people of Georgia are to be allowed to vote.

Respectfully submitted,

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APPENDIX A

The Opinion and Order of the United States District Court for the Northern District of Georgia (Atlanta Division).

[Filed Nov. 17, 1966]

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Civil Action No. 10533

JOHN MORRIS and FLORENCE ROBIN, for themselves, jointly and severally, and for all others similarly situated, *Plaintiffs*

vs.

BEN W. FORTSON, as Secretary of State of the State of Georgia, and his successor in such office, as such, *Defendant*

Civil Action No. 10546

LARRY G. JUSTICE, MRS. A. P. BEALL, MRS. VIRGINIA BUDD, DR. YANCEY F. CARTER, JR., NOBLE F. COLLINS, GLEA GRAY, BYRAN HURST, DR. BENJAMIN E. MAYS, CARL PORTER, CHARLES SLIGH, DR. HERBERT TYLER, AND EVERETT WILLIAMS, *Plaintiffs*

vs.

BEN W. FORTSON, JR., Individually, and as Secretary of State of Georgia, *Defendant*

Before Circuit Judges Elbert P. Tuttle and Griffin B. Bell and District Judge Lewis R. Morgan.

PER CURIAM.

The complaint in *Morris, et al.* v. *Fortson* is a class action seeking a declaratory judgment that Article V, Section I, Paragraph IV of the Constitution of Georgia, Ga. Code § 2-3004 conflicts with the Federal Constitution on two grounds. First, it is alleged that it would permit the malapportioned General Assembly of Georgia to elect a Governor of Georgia. Second, it is claimed that the election system set forth in that provision of the Georgia Constitution violates the Equal Protection Clause of the Fourteenth

Amendment as interpreted by the Supreme Court in the "Georgia County Unit Case", *Gray* v. *Sanders,* 1963, 372 U.S. 368, 83 S.Ct. 801, 9 L.Ed. 2d 821, and particularly that portion of the decision which announces the "one person, one vote" principle as being required in state elections. The complaint in *Justice, et al.* v. *Fortson* rests on these same contentions and others which we do not reach. These cases were consolidated for hearing on the prayer in each for temporary relief.

A three-judge district court was convened in each case under 28 U.S.C.A. § 2281, et seq. Jurisdiction is conferred by 28 U.S.C.A. §§ 1343(3), 1331, 2201, and 42 U.S.C.A. § 1988. A justiciable controversy is presented within the meaning of *Baker* v. *Carr,* 1962, 369 U.S. 186, 82 S.Ct. 691, 7 L.Ed. 2d 663, and its progeny including *Gray* v. *Sanders,* supra. Being of the view that *Gray* v. *Sanders,* supra, is controlling, a discussion of the allegations resting on malapportionment is also unnecessary.

The paragraph of the 1945 Georgia Constitution under attack provides as follows:

> "The members of each branch of the General Assembly shall convene in the Representative Hall, and the President of the Senate and Speaker of the House of Representatives shall open and publish the returns in the presence and under the direction of the General Assembly; and the person having the majority of the whole number of votes, shall be declared duly elected Governor of this State; but, if no person shall have such majority, then from the two persons having the highest number of votes, who shall be in life, and shall not decline an election at the time appointed for the General Assembly to elect, the General Assembly shall immediately, elect a Governor viva voce; and in all cases of election of a Governor by the General Assembly, a majority of the members present shall be necessary to a choice."

This Georgia constitutional provision came into being as an 1824 amendment to the Constitution of 1798. It thus long antedated the interpretation placed on the Equal Protection Clause of the Fourteenth Amendment in *Gray* v. *Sanders,* and even the Fourteenth Amendment itself. These cases bring into focus the question of gearing the Georgia Constitution to updated federal constitutional concepts.

The complaints allege that in the General Election of November 8, 1966, no candidate for Governor received a majority of the total vote cast.[1] The Court takes judicial cognizance of this public fact. It follows that the Georgia constitutional provision in question is applicable and that the Legislature, pursuant to that provision, is under the duty to select as Governor one of the two candidates receiving the highest number of votes in the election. The General Assembly is empowered under this provision to select either candidate, which means that they may select the candidate receiving the lesser number of votes.

The question presented is whether this election system is proscribed by the rationale of the Supreme Court in *Gray* v. *Sanders,* supra, as it related to the Equal Protection Clause of the Fourteenth Amendment. It is to be noted that the Georgia provision is patterned after the federal electoral college principle as it is embraced in the Twelfth Amendment to the Federal Constitution. But the Court pointed out in *Gray* v. *Sanders,* supra, that a state may not avoid equality in the vote by following the federal electoral system. Moreover, it makes it plain beyond peradventure that once the class of voters is selected, the vote of each voter is to be treated the same. Here Georgia has

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[1] This contention is based on information and belief inasmuch as the Georgia Constitution, Art. V, Sec. I, Paragraph III, and the Georgia Election Code, § 34-1506, requires that the election returns in an election for Governor and certain other constitutional offices, be sealed and transmitted by the Secretary of State to the General Assembly for canvassing and for the issuance of election certificates at the next session of the General Assembly.

selected the class of voters in the election process for Governor. It is popular vote. The system was followed. More than 900,000 Georgia voters participated. The vote of each, according to *Gray* v. *Sanders,* supra, must be treated equally.

The Georgia election system in the constitutional provision now under consideration permits unequal treatment of the voters within the class of voters selected, and it thus cannot stand. Many arguments may be made, but we need go no further than to point out, as stated, that the candidate receiving the lesser number of votes may be elected by the General Assembly. This would give greater weight to the votes of those citizens who voted for this candidate and necessarily dilute the votes of those citizens who cast their ballots for the candidate receiving the greater number of votes. The will of the greater number may be ignored. In addition, each legislator would stand as a unit in selecting the Governor, and his vote would necessarily eliminate the will of his constituents who voted for the other candidate.

It is no answer to say that the General Assembly might select the candidate having the greater number of votes and thus no harm would be done. The fact that the system makes the other result possible is sufficient, by analogy with the ill-fated Georgia County Unit System, to make it subject to constitutional attack prior to its use. A fortiori, this system is contrary to the holding of the Supreme Court in *Gray* v. *Sanders,* supra, and our decision is controlled by that case.[2]

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[2] The General Assembly of Georgia may have provided for this eventuality in adopting the Election Code of 1964. It there provided for run-off elections, including elections for the office of Governor, where no candidate receives a majority vote in the election. Code Section 34-1514. We do not now consider the applicability of this run-off method to the contest between the two candidates for Governor who received the highest number of votes.

It might be contended that, after following the "one person, one vote" principle in the election for Governor, if a stalemate is reached in that no candidate has a majority of the vote, the people might provide for the selection of a Governor by a method which does not adhere to the "one person, one vote" principle. It can be argued that if the people approve of such deviation from the "one person, one vote" principle, their rights under the Equal Protection Clause are not violated. However, this contention is refuted by the Supreme Court's opinion in *Lucas* v. *Colorado General Assembly,* 377 U.S. 713, 84 S.Ct. 1472, 12 L.Ed. 2d 632, where the Court held that the fact that a challenged legislative apportionment plan was approved by a popular vote of the people is without significance if the plan adopted fails to satisfy the requirements of the Equal Protection Clause.

A declaratory judgment will be entered to the effect that so much of Article V, Section I, Paragraph IV of the Georgia Constitution which authorizes and requires the election of the Governor by the General Assembly under the circumstances here presented is unconstitutional and void. The specific language declared unconstitutional and void is as follows:

> ". . . but, if no person shall have such majority, then from the two persons having the highest number of votes, who shall be in life, and shall not decline an election at the time appointed for the General Assembly to elect, the General Assembly shall immediately, elect a Governor viva voce; and in all cases of election of a Governor by the General Assembly, a majority of the members present shall be necessary to a choice."

A judgment accordingly may be presented by counsel for plaintiffs, after notice to counsel for defendant, for entry. A stay will be granted for a period of ten (10) days after the entry of the order, within which time the defendant may seek an additional stay from the Supreme Court of

the United States. The Court will retain jurisdiction for such other and further proceedings as may be deemed equitable and just.

This the 17th day of November, 1966.

/s/ Elbert P. Tuttle
ELBERT P. TUTTLE
United States Circuit Judge

/s/ Griffin B. Bell
GRIFFIN B. BELL
United States Circuit Judge

/s/ Lewis R. Morgan
LEWIS R. MORGAN
United States District Judge

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

Civil Action No. 10533

JOHN MORRIS and FLORENCE ROBIN, for themselves, jointly and severally, and for all others similarly situated,

Plaintiffs,

VS.

BEN W. FORTSON, as Secretary of State of the State of Georgia, and his successor in such office, as such,

Defendant.

Civil Action No. 10546

LARRY G. JUSTICE, MRS. A. P. BEALL, MRS. VIRGINIA BUDD, DR. YANCEY F. CARTER, JR., NOBLE F. COLLINS, GLEA GRAY, BYRAN HURST, DR. BENJAMIN E. MAYS, CARL PORTER, CHARLES SLIGH, DR. HERBERT TYLER, AND EVERETT WILLIAMS,

Plaintiffs,

VS.

BEN W. FORTSON, JR., individually, and as Secretary of State of Georgia,

Defendant.

Order

The Court having heard oral argument on November 11, 1966, and being advised in the premises, it is now

ORDERED, ADJUDGED AND DECREED as follows:

1. Those portions of Article V, Section I, Paragraph IV of the Georgia Constitution (Georgia Code Section 2-3004), which authorize and require the election of the Governor of

Georgia by the General Assembly, are hereby declared unconstitutional and void. The specific language declared unconstitutional and void is as follows:

> ". . . but, if no person shall have such majority then from the two persons having the highest number of votes who shall be in life, and shall not decline an election at the time appointed for the General Assembly to elect, the General Assembly shall immediately, elect a Governor viva voce; and in all cases of election of a Governor by the General Assembly, a majority of the members present shall be necessary to a choice."

2. The Defendant, BEN W. FORTSON, individually and in his capacity as Secretary of State of Georgia, and all persons having actual notice of this Order, are hereby restrained and enjoined from seeking to cause the election of the Governor of Georgia by the members of the General Assembly.

3. This order is hereby stayed until November 28, 1966, in order to permit the defendant to seek an additional stay of this order from the Supreme Court of the United States.

4. This Court hereby retains jurisdiction to enter such other and further orders as may be required to further implement and effectuate the provisions of this decree.

This 17th day of November, 1966.

/s/ Elbert P. Tuttle
ELBERT P. TUTTLE
United States Circuit Judge

/s/ Griffin B. Bell
GRIFFIN P. BELL
United States Circuit Judge

/s/ Lewis R. Morgan
LEWIS R. MORGAN
United States District Judge

APPENDIX B

Motion for Preliminary Injunction (With Exhibits A, B, and C Thereto Attached) Filed by Appellees John Morris and Florence Robin in the United States District Court for the Northern District of Georgia on November 15, 1966.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
(ATLANTA DIVISION)

Civil Action No. 10533

JOHN MORRIS and FLORENCE ROBIN, for themselves, jointly and severally, and for all others similarly situated,
Plaintiffs,

vs.

BEN W. FORTSON, as Secretary of State of the State of Georgia, and his successor in such office, as such,
Defendant.

Motion for Preliminary Injunction

Upon the complaint heretofore filed herein and the exhibits attached hereto, the plaintiffs move the Court to issue a preliminary injunction ordering the defendant to call a special election under the terms and provisions of the Georgia Election Code and more particularly Section 34-1515 thereof.

(I) The grounds of this Motion, as more fully set forth in the Complaint and the exhibits attached hereto are that:

(a) The General Election of November 8, 1966, resulted in a failure of election in that neither of the two candidates for election to the office of Governor received a majority of the whole number of votes cast.

(b) Although a notice of intention to write in the name of Ellis Arnall was filed with the defendant and was published in a daily newspaper of general circulation in Georgia, Mr. Arnall in no way encouraged or discouraged that movement and his name was not listed on the ballot in the general election.

(c) The Georgia General Election of November 8, 1966, was conducted under and pursuant to the Constitution of the State of Georgia of 1945 and Section 2-3004 of said Constitution.

That provision of the Constitution of the State of Georgia of 1945 required that, in the event no candidate for Governor received a majority of the whole number of votes cast the Governor was to be elected by members of the General Assembly of Georgia.

On the 21st day of October, 1966, the defendant received from the Attorney General of Georgia a written and official opinion which declared, in part, as follows:

> (4) The last question posed was: "Is the provision of Code Section 34-1514, providing for a runoff election, in instances where no candidate receives a majority of the votes cast, on the fourteenth day after the day of the holding of the election, authorized by the provisions of Article V, Section I, Paragraph II, of the Constitution, which permits the General Assembly to fix the date on which the election of the Governor shall take place?" Article V, Section I, Paragraph II, of the Georgia Constitution of 1945, provided that the first election for Governor under the Constitution would be held on Tuesday after the first Monday in November of 1946, and that an election should take place every four years thereafter, on said date, until another date be fixed by the General Assembly. The Georgia Election Code enacted in 1964 made no change in the date of the November election for the office of Governor. See Code Section 34-802. Code Section 84-1514, relied upon by those who propounded the question to you, relates to a "runoff election".
>
> Moreover, Paragraphs III and IV of Section I of Article V of the Constitution are specific as to the transmission of the returns for the election of Governor and as to what happens in the event no person receives a

majority of the votes cast for Governor. Although the *unofficial* results of an election are made known, via the news media, shortly after the close of the polls, the Constitution provides that the official returns for the election of the Governor shall be sealed up by the managers, addressed to the President of the Senate and Speaker of the House of Representatives, and transmitted to you, and that you, without opening said returns, shall lay them before the Senate on the day after the two Houses shall have been organized. Those returns are to be opened and published before a joint session of the General Assembly and if no person shall have a majority, "then from the two persons having the highest number of votes, who shall be in life, and shall not decline an election . . . the General Assembly shall immediately, elect a Governor viva voce" by a majority of the members present.

Therefore, any construction of Code Section 34-1514 as an effort to change the date on which the election of the Governor occurs, would contravene the specific provisions of Paragraphs III and IV, Section I, Article V, of the Georgia Constitution. Thus, it is my official opinion that the answer to the fourth question should be "no."

Very truly yours,

[s/] ARTHUR K. BOLTON
Attorney General

Through the newspapers of Georgia (and radio and television) in thousands of articles prior to November 8, 1966, the voters of Georgia were informed that in the event that no person in life received a majority of the whole number of votes cast, the Governor would be elected by the General Assembly of Georgia. In Exhibit A hereto attached are found some of the clippings from Atlanta's daily newspapers so advising the Georgia electorate. Many hundreds

of comparable articles and editorials appeared in Georgia's daily and weekly newspapers prior to the November 8, 1966, general election.

Thus the general election for Governor of November 8, 1966, was held under a total misapprehension on the part of voters of what, in fact, the law was and the voters in reliance upon the Constitution of the State of Georgia as interpreted by the State acting through its officials were deprived of their right to decide who was to serve them as Governor until the year 1971 on a free and fair basis.

(d) Although the provisions of Section 34-1514 of the Georgia Election Code provide for a runoff election, the people of Georgia were advised prior to the November 8, 1966, general election that that provision of law was not constitutional and that election was held on the basis of its unconstitutionality. For this Court to order a runoff election on a date certain under the provisions of Section 34-1514 of the Georgia Election Code and bar write-in voting in such election would:

1. Deprive the voters of Georgia of their right to reject the nominees of both major political parties in Georgia and, thereby, of their right to vote;
2. Deprive the voters of Georgia of their right under the laws and Constitution of the State of Georgia to vote for whomever they please by write-in ballot, an inherent right of suffrage;

3. Result in this Court's selecting the persons for whom the people of Georgia might vote when, in fact and in law, no judgment as to who the candidates in a run-off election should be was made, since the election was conducted under and by virtue of a state constitutional provision of which the electorate of Georgia was aware and upon which it relied but which was, in law and in fact, invalid;

4. Result in fact in the ex post facto nomination by a Court of the United States of the persons for whom the citizens of Georgia might vote;

5. Deprive minority political parties and groups and independent candidates of their right of access to the ballot;

all of which is in violation of the right of plaintiffs to vote and have their votes counted as guaranteed them by Article IV, Section 4 and by the equal protection and due process clauses of the Fourteenth Amendment and of the Fifteenth Amendment of the Constitution of the United States, and further deprive them of their right to dissent and petition for a redress of grievances as guaranteed by the First Amendment of said Constitution.

(e) Additionally plaintiffs are informed and believe and based upon such information and belief aver that in the event a special election were called, the reasons for a write-in campaign would no longer exist and the probability of the present factual situation's recurrence is infinitesimal. In the 1966 Democratic Primary runoff election, plaintiffs are informed and believe and based upon such information and belief aver that Republican voters crossed over and voted in the Democratic Primary runoff election in an effort to nominate Lester Maddox as the Democratic nominee for Governor, this process resulting in the nomination for Governor of a Goldwater Democrat by the Democratic Party of Georgia and a Goldwater Republican by the Republican Party of Georgia, and, in fact, providing Republican voters with disproportionate strength in the electoral process, they being afforded the opportunity of selecting the gubernatorial nominee of the Democratic Party in the Democratic primary and the nominee of the Republican Party of the State of Georgia by other means. See Exhibit B attached hereto and made a part hereof.

Plaintiffs are further informed and believe and based upon such information and belief aver that it was this basic unfairness—one man, two votes for members of the Republican party—that resulted in write-in votes for Ellis Arnall and others for Governor. A special election with a runoff election therefrom would cure the basic unfairness of the nominating processes of Georgia and the reason for a large number of write-in ballots would not be present in any post special election runoff.

2. In another case in this court (*Morris, et al.* v. *Fortson, et al.*, Civil Action No. 10483) this Court entered an order declaring statutes limiting assistance to illiterate voters unconstitutional, and retaining jurisdiction for the purpose of counting write-in votes. In that case, in open court and in good faith, attorneys representing the State Election Board of the State of Georgia and the Ordinaries of the State of Georgia stipulated that in those counties utilizing Votomatic machines, all voters would be provided with write-in envelopes into which data processing cards were to be inserted prior to depositing of ballots in ballot boxes.

Plaintiffs are informed and believe and based upon such information and belief aver that literally hundreds of complaints over election procedures have been made and filed with Write-In Georgia, a campaign organization which requested that write-in votes be cast for Ellis Arnall. Those complaints are presently being analyzed and investigated.

Plaintiffs further understand that attorneys for members of the affected class, affiliated with the write-in movement, intend to move this court to count write-in ballots not counted or disallowed for spelling, the number of which is estimated to be in the tens of thousands and to disallow data processing card ballots which were not enclosed in envelopes from being counted, since envelopes not containing data processing cards were not counted. Additionally according to press reports the data processing machines in DeKalb County broke down and destroyed hundreds of

ballots. Due to election irregularities and alleged violation of this Court's orders by state election officials, a final determination of the number of votes cast for any person in the General Election of November 8, 1966, cannot be made until this Court hears and determines election questions under its order of November 1, 1966, retaining jurisdiction of that case for the purpose of issuing any and all additional orders that may become necessary or appropriate in order to effectuate the judgment of the court and for such other and further proceedings as are deemed appropriate in connection with the general election of November 8, 1966, having to do with the tabulation of write-in ballots cast.

(3) Additionally, plaintiffs are informed and believe and based upon such information and belief aver that, in certain Georgia counties voting was held on a racially segregated basis and Negro illiterates were deprived of the right of assistance in violation of this Court's prior order. It is understood that based upon these facts attorneys for members of the affected class affiliated with the write-in movement, may move for contempt citations of one or more of the Ordinaries of Georgia. (Regarding election irregularities, see Exhibit C attached hereto.)

(4) The plaintiffs and the class they represent are guaranteed a republican form of government by Article IV, Section 4 of the Constitution of the United States, the right of dissent and petition for a redress of grievances by the First Amendment of said Constitution and the due process and equal protection clauses of the Fourteenth Amendment of said Constitution, and they are provided by the laws of the United States with the remedies for their deprivation, which remedies they seek to enforce in this Court.

(5) A runoff election under the provisions of Section 34-1514 of the Georgia Election Code will not cure the failure of election of Governor occurring on November 8, 1966, and Section 34-1515 becomes automatically applicable.

(6) No injury will be sustained by the defendants or by the public through the issuance of a preliminary injunction.

(7) The Constitution of the State of Georgia of 1945 provides for the incumbent Governor of the State of Georgia to remain in office until his successor is chosen.

(8) The issuance of a preliminary injunction as prayed for herein will not cause undue inconvenience or loss to defendants, but will prevent irreparable injury to the plaintiffs and members of the plaintiffs' class.

(9) This is the second application for extraordinary process in this cause.

WHEREFORE, PREMISES CONSIDERED, plaintiffs respectfully pray that this Court take jurisdiction of this matter, that, under Rule 65 of the Federal Rules of Civil Procedure, this Court issue a preliminary injunction to be later made permanent against the defendant herein.

Respectfully submitted,

s/ Charles Morgan, Jr.
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Of counsel:

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Exhibit A to Motion for Preliminary Injunction

10/3/66

WRITE-IN NEVER WON STATE, BUT THURMOND SWEPT S.C.

By Achsah Nesmith

Since the result of the Democratic primary runoff came Wednesday several prominent Democrats have mentioned the possibility of a write-in campaign.

According to Secretary of State Ben Fortson no statewide office in Georgia has ever been won by a write-in candidate, but then no one had ever been elected to one in South Carolina until 1954, when Sen. Strom Thurmond became the first man ever to win a seat in either house of Congress on a write-in vote. Some local and county-wide offices have been won on write-in campaigns.

State election laws provide that citizens must be given an opportunity to write in the name of any person they desire for any office in a general election. Write-ins are not legal in primaries.

Where paper ballots are used, the procedure is simple. Space must be allowed for a write-in candidate, and the voter puts in the name of the office and the name of the person he wishes to vote for.

When machines or votomatics are used, cards must be provided for voters for that purpose, Fortson said.

Runoff Possible

Further, state law requires a clear majority to win election for governor, and if a write-in candidate should cause a split between three candidates, with no clear majority, there would be a runoff election.

Thus, it is possible and it has been done, but Sen. Thurmond is alone in his class. The difficulties of mounting a write-in campaign are great and there are dangers.

It would take a great deal of money, for one thing. Candidates find it difficult enough to get elected with their names on the ballot. Where paper ballots are used in addition to machine or votomatic ballots because of last-minute changes in the line-up, voting tends to fall off and the possibility for pool-worker error is great.

With voters having to work it out on their own, the difficulties would increase. If a voter simply put down a last name, the ballot wouldn't count, Fortson said, since it could conceivably mean anyone with that last name. As long as a name was written so that it would normally be assumed to mean the person, it would count, he added. For instance, a voter who wrote in "Bo Callaway" would be assumed to mean Rep. Howard (Bo) Callaway.

But voters who spell poorly and/or write illegibly would create problems.

Stay At Homes

In addition, voters who don't like either candidate in a race tend to just stay home. Getting people out to vote is obviously a difficult task in the best of times, and frequently less than half the registered voters ever come near the polls.

Although Georgia Democratic gubernatorial candidates have been unopposed on the general election ballot for generations, no one has worked up an effective write-in campaign against any of them, no matter how bitter the campaign for the nomination.

Sen. Thurmond was running for a seat vacated by the death of Burnet Maybank on Sept. 1, two days before the Democratic party was to certify him as primary nominee —there was some question as to whether this was required on that date or not—and the state executive committee voted to nominate a successor in convention.

There having been no Republican opposition for a state race in South Carolina since Reconstruction, Thurmond

based his campaign on the right of the people—not a committee—to choose their governor.

It produced the largest general election turn-out in the history of the state, with a few hundred write-in votes for a third candidate, and Thurmond swamping the convention nominee—Edgar A. Brown.

Atlanta Daily World, October 7, 1966

WRITE-IN EFFORTS AID MADDOX

There can be no question that the winning of the Democrat nomination for governor by candidate Lester Maddox, an extremist on the race issue, is one of the biggest political surprises and shocks in the history of the state.

Another big shock hurt the members of our racial group when the Rev. M. L. King, Sr., suggested before a largely white audience in Atlanta that Sen. Herman Talmadge "is the only man who can save the state." From reports we've received, the liberal white group who had assembled to consider the question of a write-in candidate for governor, before whom the Rev. King spoke, was also shocked by the King suggestion of Sen. Talmadge.

We can sincerely sympathize with the moderate Democrats (white and black) because the Maddox nomination put them in a strait-jacket, so to speak.

But there is no reason or logic to their efforts to even consider a write-in campaign for anyone for governor. We must face the prospect that either Howard Callaway or nominee Lester Maddox will be elected governor of Georgia Nov. 8th.

A write-in vote will have the effect of aiding nominee Maddox. We urge our readers to have nothing to do with any write-in effort, and try to discourage others from supporting it.

We hope our political leaders will ask our white friends to refuse to help nominee Maddox by becoming a party to any write-in effort.

Atlanta Daily World, October 2, 1966

WRITE-IN PLAN AIDS MADDOX

A number of our leaders have adequately pointed out the fallacy and danger in a write-in vote for governor in the November 8th election. Likewise, a number of public officials such as Governor Carl Sanders and Alderman Everett Millican and Alderman Q. V. Williamson have pointed out the futility of such efforts.

We recognize that the emergence of nominee Lester Maddox, an extremist on the race question, puts the moderate white democrat in an embarrassing position and the Negro democrat in an almost impossible dilemma.

But we think the time has come for men to put conscience and conviction above party loyalty.

The situation confronting the voters is simply one which asks: Do you want Lester Maddox to be governor or do you want Congressman Howard Callaway to be governor?

One of these two men will become governor regardless of the effects of the write-in campaign. But we hasten to remind our readers that the unanimous opinion of those familiar with politics is that the write-in vote will have the effect of aiding Democrat nominee Maddox.

It is also conceded that the vote in November will be close between the two nominees—Maddox and Callaway. Therefore, regardless of the size of the write-in vote, there is danger of neither nominee receiving a majority of the votes. In this event the election of governor goes to the legislature. There are only about 20 Republicans out of

205 in the State House, so it does not take much imagination to see that it would elect Democrat Maddox.

The Negro voters of the state did all they could to make candidate Ellis Arnall the Democrat nominee. Now, we think our leaders could logically ask former Gov. Arnall and the leaders of the write-in campaign in his behalf to stop the effort because it is only aiding nominee Maddox to the governorship.

But regardless of what others do, we urge our people to stand together in unity again racial extremism.

Atlanta Constitution, October 4, 1966

NOVEMBER RUNOFF CLEARLY FORBIDDEN

Even if there were a write-in candidate for governor in the Nov. 8 general election, there would be no possibility of a runoff.

The state constitution makes this clear.

There has been considerable speculation about a write-in candidate with the idea that he might be able to get into a run-off with either Democratic nominee Lester Maddox or Republican nominee Howard (Bo) Callaway.

Secretary of State Ben Fortson and other officials pointed out Monday that while the state election code indicates the possibility of a runoff in the general election, the state constitution makes it clear that no runoff may be held even if a candidate fails to get a majority of the votes.

Fortson said there was no doubt in his mind that the constitution would take precedence over the election code and that Atty. Gen. Arthur Bolton would so rule if called upon for an official opinion.

Article 5 of the state constitution provides that the results of the general election be sealed up and that they later be turned over to the Senate and House of Representatives.

The results are then opened up during a joint session of the legislative bodies.

If no one has a majority of the votes, the state constitution provides that "from the two persons having the highest number of votes . . . the general assembly shall immediately elect a governor viva voce (voice vote)."

A majority of the legislators present would be needed to elect the governor under such circumstances.

Atlanta Daily World, October 5, 1966

PLAY WITH FIRE

First, we wish to remind our readers that our race confronts the most crucial time in our states history during the last 100 years. We urge them to read and listen carefully to every development between now and Nov. 8th.

The Georgia Democrats are confronted with a problem in Fulton County to find a replacement for Cong. Charles Weltner who withdrew as a candidate for the Fifth Congressional District position rather than support nominee Lester Maddox for governor. Any replacement will have the effect of supporting nominee Maddox.

Therefore, it is with surprise that we read and hear reports that State Senator Leroy Johnson has projected his name for consideration as a replacement for Congressman Weltner. If Mr. Weltner declined to run, and we commend his act of high principle, how can Senator Johnson enter his name for consideration?

We recall soon after the runoff primary, Senator Johnson suggested that the voters go fishing on Nov. 8th. This is comparable to a neighbor suggesting that his neighbor go fishing while the neighbors house is on fire.

We have also heard suggestions that a write-in candidate be tried.

There is a two-man contest for governor and any write-in candidate will have the effect of aiding Mr. Maddox.

We deplore all these suggestions which will only complicate a crucial situation.

This is a time for deliberate, calm and responsible action. This is not a presidential election, where the party issue should be considered. It is only a state election with the governorship the main prize.

Atlanta Daily World, October 26, 1966

DOOMED DRIVE

(From The Macon News)

A group of political pied pipers is attempting to siphon off votes from Callaway and Maddox by encouraging a write-in campaign for Ellis Arnall.

A write-in drive would be an exercise in futility, a doomed-from-the-start throwaway of votes which would benefit Maddox and harm Callaway.

This newspaper vigorously supported Arnall. But it is crystal-clear he cannot be elected governor. The choice is between Maddox and Callaway and the quicker this is realized the better.

Atlanta Journal, October 7, 1966

WRITE-IN ATTACKED

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of some "write-in" votes he was supposed to have gotten in his native Telfair County. Some of these, it was disclosed later, were of a transparent nature.

This occurred when Mr. Talmadge's father, the late Eugene Talmadge died, after winning the Democratic nomi-

nation. The Georgia Supreme Court overruled the action of the House members and named M. E. Thompson acting governor.

Alderman G. Everett Millican, who also is a former state senator, said he thought "it would be a great mistake for us to have a write-in campaign." He added:

"In the first place, it couldn't be successful. The next thing is: the people have two candidates to vote for for-governor—one Democratic, one Republican.

"If they don't want one of these, they've got the choice of the other, and they ought to take it. Because, generally speaking, if you write-in in order to beat one candidate, what you really do is give that candidate a better chance to be elected."

Mr. Millican said also that there was a possibility a write-in campaign could force the decision into the House of Representatives.

"I don't think the possibility is great," he said, "but if that happened, it would be a mistake. I think it would be wrong for anybody but the people to select our governor."

Comments from the two men got a rebuttal, however, from James O'Hear Sanders, a sponsor for a write-in movement in behalf of former Gov. Ellis Arnall.

"Anyone who thinks of the write-in campaign for Gov. Ellis Arnall has no chance of victory had badly misread the determination of hundreds of thousands of aroused Georgians who cannot accept either Lester Maddox or Howard "Bo" Callaway," he said.

"Following a brief announcement of the start of the write-in campaign," said Mr. Sanders, "more than 50 persons attended a spontaneous rally at the Georgian Terrace Hotel. These 500 delivered a mandate to their elected steering committee—that mandate being to forge ahead with a campaign to elect Ellis Arnall.

"Since that rally, committees have been established, fund-raising has begun, and we have seen the marshaling of support for the write-in campaign by other groups—the Fulton County Democratic Executive Committee, the Young Democrats Club, and Young Democrats organizations at Morehouse College, Emory University and Georgia State College."

"At 3 P.M., Sunday," added Mr. Sanders, "there will be a state-wide rally of Arnall supporters in the ballroom of the Atlanta Biltmore Hotel, and a college students' parade, with participants from all over Georgia, is scheduled in Atlanta on Wednesday."

Meanwhile, the Fulton Atlanta County Democratic party urged its members Thursday night to write in a candidate for governor in the Nov. 8 general election as a slap at the party's nominee, segregationist Lester Maddox.

A statement issued by the party's executive committee said Maddox did not stand for the platform and "therefore the party cannot accept Mr. Maddox."

The party left the choice of write-in candidate to the voters.

The action brought quick response from Maddox, who has lost the support of several Democratic factions since defeating Ellis Arnall in the primary runoff.

"I have never seen such bitterness before when I have lost," he said. "I think it's time all Democrats, whether spelled with a big D, little D or middle-sized D closed ranks now that they have a mandate from the people."

Jack Turner, head of the Fulton County group, said the statement meant Fulton County Democrats could not support either Maddox or Republican Howard (Bo) Callaway.

The Young Democrats Club executive committee passed a resolution to endorse a write-in campaign for former Gov. Ellis Arnall, beaten in the runoff by Maddox.

In addition Young Democrats at Morehouse College, Emory and Georgia State endorsed write-in campaigns for Arnall. The Georgia State group switched from Jimmy Carter.

These new groups join ranks with another group of about 400 who met Wednesday night in Atlanta and chose to back Arnall as a write-in in November. Arnall is the only defeated primary candidate to announce he would not oppose a write-in campaign.

A few persons at the Fulton Democratic meeting of about 200 protested a write-in because they felt it might help the election of Callaway.

The Atlanta Constitution, October 10, 1966

POLITICS AND PEOPLE

ANTI-MADDOX VOTERS FACED WITH 2 CHOICES

By SAM HOPKINS
Constitution Political Editor

There are two schools of thought among anti-Lester Maddox voters as to how he can best be kept out of the governor's chair:

1. Go all out for Republican Howard (Bo) Callaway.

2. Work up a massive write-in vote for someone with the hope he will run second in the Nov. 8 election.

One high-ranking Democratic official said privately Friday that at this point he would have to go the first route.

"A write-in would be the most stupid thing in the world," he said. "It would definitely give Lester the election."

Comment and Analysis

It was his opinion that even if former Gov. Ellis Arnall, who is being mentioned most prominently as the person around whom a write-in campaign would be built, ran second to Maddox the General Assembly would not elect him.

If there were no write-in vote and all those who dislike the idea of Maddox as governor voted for Callaway, the contest likely would be close, with Maddox probably having the edge at this time.

And it seems clear that if there is an unorganized, haphazard write-in for one or more candidates it might well assure Maddox's victory.

But apparently the move to organize a write-in campaign for Arnall is catching on faster than most people ever imagined it would, not only in Atlanta but in other parts of the state.

Maddox defeated Arnall in the Sept. 28 Democratic run off 443,055 votes to 373,004.

Some of the supporters of an Arnall write-in believe that even if a million voters turned out in the November election, Arnall could get fewer votes than he did in the primary runoff and still run second in the race, and keep either Maddox or Callaway from getting a majority of the votes.

In such an event, a joint session of the House and Senate in January would elect a governor from either of the two candidates who ran first and second.

It is the feeling of many observers that if Arnall ran second with a write-in vote the front-runner would be Maddox.

This would be an ironic political development inasmuch as Callaway was considered such a strong front-runner prior to Maddox's victory in the runoff with Arnall.

The Maddox balloon seemed to soar after his nomination when high-level Democratic leaders suddenly swung their support to him.

Many of the Arnall write-in advocates admit that if the legislators had to decide today between Maddox and Arnall as governor they would elect Maddox.

However, they feel that the period between the Nov. 8 election and the opening of the January session of the legislature would allow time to change the minds of individual legislators.

This has been one of the strangest political years in Georgia's history, and there still could be some surprises before it's all over.

Atlanta Constitution, October 10, 1966

CLOSE-UP

HOW'S THAT AGAIN? APATHY?

What was that about apathy toward the governor's race?

At one point, the likeliest explanation seemed to be that most people had made up their minds to vote for Bo Callaway anyway, so it didn't matter much who won the Democratic nomination.

But now I wonder whether it wasn't some intuitive sense among Georgia voters, like birds who can detect an early fall. It could be that the voters sensed things would get so intense about October that they played it cool earlier just to survive.

Instead of the usual one-man November race, it now appears we will have three. For the Ellis Arnall write-in campaign, which Bo Callaway could have headed off if he had moved quickly enough to the center, now seems to be for real.

Any write-in—even a small one—is bad news for Mr. Callaway. As he said last week, he needs Democratic votes to win.

The arithmetic is simple enough to understand. Until Barry Goldwater charmed the so-called Mad Democrats, the highest tally any Republic candidate ever had posted in Georgia was the 274,472 votes Richard Nixon took in 1960—and that was only 37.5 per cent of the total.

So 275,000 is as good a calculation as any for the Republican base vote. Of course it includes some Negro vote, which used to go heavily Republican but doesn't now. And it included an unmeasured anti-Catholic vote.

Lester Maddox in the recent runoff won with 430,420 votes. But by conservative estimate, 75,000 Callaway supporters naively crossed over to vote for Mr. Maddox in the mistaken belief he would be a pushover in November. That leaves a Maddox base vote of 355,000.

Ellis Arnall took 360,021 in the runoff. It would be foolish to believe that even a superbly organized write-in campaign can recapture all of them. But even a third could drastically affect the outcome.

Bo Callaway should be out beating the drums and sounding the klaxon to convince Arnall Democrats that a write-in would help Maddox. Some Arnall voters already have concluded that for themselves. Others are so bitter over the crossover maneuver that they are willing to let Maddox win.

Bo should be concentrating on the rest. He can't just say Lester is bad. He has to explain how he is better. So far he hasn't.

Meanwhile, that once-cold kettle is whistling now.—BRUCE GALPHIN.

Atlanta Constitution, October 10, 1966

CHANTING GEORGIA MODERATES LINE UP FOR ARNALL WRITE-IN

By Duane Riner

"I don't want no racist governor,
I don't want no company man;
All I want is Ellis Arnall
And I'll elect him if I can."

Shouting, singing, placard-waving Georgia moderates mobilized for a state-wide write-in campaign for Ellis Arnall here Sunday with a demonstration that would have been the envy of Arnall before he was bumped in the runoff. The two surviving gubernatorial candidates would have enjoyed it also.

A standing-room-only crowd estimated by "Write-in, Georgia" officials at 1,000 overflowed a Biltmore Hotel ballroom into a corridor as speaker after speaker gave assurances that a Nov. 8 write-in could be effective enough to keep Democratic nominee Lester Maddox or his Republican opponent Rep. Howard H. (Bo) Callaway, from getting a majority of votes.

Failure of one of the two nominees to win a clearcut majority would throw the election into the General Assembly for a decision between the top two vote-getters.

Charges that 75,000 to 100,000 Callaway supporters cast runoff ballots for Maddox with the thought that he would be an easier opponent to defeat in the general election were reiterated in speech and song. In one parody, led by two folk singers equipped with guitar and banjo, Callaway is quoted as pleading:

"Oh, Mr. Maddox! Oh, Mr. Maddox! Can I please have back the votes I lent to you? Now the runoff's in your sack, I would really like my Republicans back, or I really don't know what I'm going to do."

Gainesville newspaper publisher Sylvan Meyer termed it "very important for a substan- Continued on Page 6, Column 2

Atlanta Journal, October 12, 1966

THE RESTLESS MODERATES

THE RESTLESSNESS of disgusted Georgia moderates continues to be one of the most important aspects of the race for governor. The fact that we are seeing restlessness and not passivity is in itself hopeful.

In no recent Georgia election has there been so much noise about the lack of a happy choice for moderate-thinking people.

In the kind of expression of principle that rarely is seen in politics, an effective and much-admired young congressman has withdrawn from the race for reelection rather than support the Democratic gubernatorial nominee, Lester Maddox.

Others of the Democratic party, candidates and members of party executive committees, have moved individually to make it clear that they do not support Maddox or condone what he symbolizes.

The Fulton County Democratic party organization broke all precedent by emphatically rejecting the Democratic nominee for governor, as well as the Republican candidate.

The write-in movement has grown, and moves are afoot to establish a new organization to speak for Georgia Democrats who cannot accept Lester Maddox.

In short, many people in Georgia are not taking this situation in dejection, with withdrawal from the fight for the future of a state that had been making great strides. They mean to be heard. They mean to fight. They do not want anyone, here or elsewhere, to think this is a state

where Lester Maddox and Bo Callaway represent the only two great bodies of public sentiment.

Their determination and concern for their state are praiseworthy.

But the main question for them now is how best to make their weight felt. There are disagreements about this, mainly revolving around write-in talk.

There is not much disagreement, actually, about which of the two official candidates is the more responsible. Most of those who now are actively expressing their disgust would vote for Mr. Callaway if they had to choose between the two on the ballot. But some dislike his public record so much that they are willing to damage his chance, through the write-in movement, and help elect Mr. Maddox. That is the main import of the write-in campaign.

So far Mr. Callaway seems oblivious of the meaning of this whole development; he offers little to reassure the moderates about what kind of governor he would be.

The write-in effort, if it gained strength, would take votes away from Callaway. And if it had the extraordinary and unlikely success of throwing the election into the Georgia Legislature by depriving either official candidate of a majority, Mr. Maddox probably would be given a second shot at the governorship if he had trailed Mr. Callaway in the returns.

This is the point which should be considered long and well by those pondering the write-in.

A logical objective for moderate-thinking Georgians at this point would be the formation, perhaps after the election, of a new and unofficial Democratic force in Georgia. By renouncing the leadership of the man who technically will be at the head of the Georgia Democratic party for the next four years no matter how the election goes, this new

organization could show that Georgia moderates are numerous and determined to be the future. In time it could emerge as the Democratic party in this state.

The write-in effort is much less likely to have a lasting good impact of that kind.

Atlanta Constitution, October 14, 1966

RIVAL JEOPARDIZES JOBS, CALLAWAY TELLS STUDENTS

By Sam Hopkins
Constitution Political Editor

Albany—Republican Howard (Bo)Callaway told Albany Junior College students here Wednesday that Lester Maddox as governor would give Georgia "four years of an image that will keep you from job opportunities."

Maddox's opponent reminded them that "in any other year in Georgia's history Lester Maddox would be your gov-

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Callaway receives endorsement of Atlanta banker William R. Bowdoin and Negro Baptist agency. Story on Page 3.

ernor," but that with a GOP candidate there will be a two-party race in the Nov. 8 election.

With no Republican running in the past, the Democratic nominee automatically became governor.

Callaway continued to stress the difference between himself and Maddox in experience, approach to problems such as school guidelines and in the type of persons surrounding each. He said this political year (Continued on Page 8, Column 1) may present "the greatest difference (in candidates) we've ever offered to Georgians."

The Republican cited his 12 years on the State Board of Regents, his state Chamber of Commerce and congressional work as compared with Maddox, who "never had a single day of local, state or national experience" in government.

Callaway also said that while he was trying to soothe racial feelings in Americus and worked "responsibly" for changes in the school guidelines in Congress, Maddox attended a Ku Klux Klan rally and passed out ax handles in Americus. He said Maddox wants an "open confrontation" with the federal government over the schools.

Callaway made several speeches in Albany and Leesburg during the day and evening and shook hundreds of hands during shift changes at local mills.

He defended his vote against the minimum wage bill before Congress and pointed out that Georgia's 10 congressmen split 5-5 on the vote.

Inflation Fear

Callaway contended the wage bill would "create inflation faster than you believe" and would take away from the unskilled laborer his "chance of getting a job." He said the Wall Street Journal reported that the "entire purpose of the minimum wage bill was to keep industry from moving south."

In response to a question, the GOP standardbearer said that he believed a Republican governor during a Democratic administration in Washington would result in Georgia's getting more federal funds.

"If Georgia goes Republican," he said, "I promise you the South shall rise again. We'll have our fair share" of federal funds.

In a speech to the Albany Rotary Club, Callaway said there was no doubt that he had "definitely lost ground" in the governor's race since Maddox won the Democratic

nomination Sept. 28, but although it is "still a horse race," he is confident of victory.

However, he added that the "one thing that could elect Lester Maddox is the write-in vote. I am extremely concerned about it.

ARNALL DRIVE

A drive is under way for a write-in campaign for former Gov. Ellis Arnall, whom Maddox beat in the primary runoff.

Callaway seemed somewhat speechless at the Rotary meeting over a gift presented to him.

President Woody Kirksey explained that inasmuch as Callaway had been described by some people as similar to Abraham Lincoln—a GOP president—he might need some sort of tool for splitting rails, one of Abe's reported activities.

But the only thing that could be found on short notice, Kirksey said, was an ax without the head.

And as the Rotarians roared, the Republican candidate stood there momentarily holding and staring at an ax handle.

The Atlanta Journal, October 21, 1966

CALLAWAY SAYS FOE FRIGHTENS INDUSTRY

BY STEVE BALL, JR.

Howard (BO) Callaway said "industry presidents" say major industries are refusing to make final decisions about moving to Georgia until they are sure Lester Maddox won't be elected.

The Republican candidate for governor, addressing the Atlanta Life Insurance Underwriters Association at a Thursday luncheon, declared Mr. Maddox, his Democratic

opponent, has gotten publicity of the sort "your companies wouldn't want to buy in a million years."

The Maddox candidacy "is costing us dearly already," Rep. Callaway charged.

"Industrial development people and industry presidents are telling me that major industries today are waiting to make a final decision about coming to Georgia until they are certain my opponent won't be elected," he elaborated.

Rep. Callaway, who received an enthusiastic reception from the underwriters, also accused Mr. Maddox of attempting "magic" in his promises about money.

THE GOP hopeful said Mr. Maddox has pledged $140 million more for cities over four years, $60 million more for counties over four years and another $200 million for a teachers' pay raise.

"And now I find . . . he has also promised a tax reduction which would virtually sabotage the teachers' pay raise . . . by taking almost $50 million out of the general fund," Rep. Callaway said.

He explained that one of the state petroleum groups claims Mr. Maddox has promised to take the seven-tenths of a cent per gallon sales tax on gasoline.

"In other words, in separate promises he pledges no tax increase and a tax decrease and then promises programs that will cause a tax increase," Rep. Callaway declared.

"What kind of magic is that? It sounds like he's running for Houdini instead of governor."

In a question-and-answer session after his talk, Rep. Callaway strongly hinted that Georgia's schools might be closed with Mr. Maddox as governor despite Mr. Maddox' "apparently sincere" pledge not to close schools.

Gov. George Wallace of Alabama, with "years of experience," keeps Alabama extremely close to martial law all the time, he said.

"CAN YOU imagine what might happen under a man with no experience?" he wondered aloud.

"Unless you go at it (opposing the federal government) in a very responsible way, it would be possible to end up with our schools closed."

To a question about the write-in campaign for Ellis Arnall, Rep. Callaway, while being extremely careful not to offend the "dedicated people" behind the movement, said he thinks people will eventually become "resigned to the fact" that either he or Mr. Maddox is going to win and vote for the better qualified of the two.

He indicated he believes he would lose if it were up to the General Assembly to elect a governor.

Besides, he said, "it might be March or April until we know who the governor is and we've gone through two governors once."

Atlanta Constitution, October 21, 1966

LEGISLATURE COULD ELECT, SMITH HOLDS

By United Press International

Incoming Lt. Gov. George T. Smith said Thursday there was no doubt it would be legal for the legislature to elect a governor if a write-in movement prevents any one candidate from getting a clear majority of the votes.

A question has been raised of whether the legislature can legally select the governor in such a case because it is not yet fully reapportioned.

Smith said the courts had held that Georgia's legislature was legally apportioned as long as it became fully apportioned during this legislative session.

"We have to leave the matter in the hands of the court," Smith said, "and the court has ruled that the apportionment

of the House and the Senate is legal as long as we reapportion next year."

A group of moderate and liberal Democrats has formed a group to promote former Gov. Ellis Arnall as a write-in candidate. Arnall lost to Maddox in the Democratic primary runoff.

EDITORIALS *Atlanta Journal*

FEED A DEAD HORSE?

ON NOVEMBER 8 there is a general election in Georgia. As a result of the Democratic primary and runoff, one of the candidates is Lester Maddox of Atlanta.

Another candidate is the first Republican to run for the governorship in our time. He is Rep. Howard (Bo) Callaway of Pine Mountain.

Thus, the stage should be set for a contest between one candidate, duly selected by the rules of the Georgia Democratic party, and another whose name is on the ballot as the result of more than 100,000 signatures.

But there is a complication. We have a write-in movement by those who find nothing attractive in either candidate. They offer the name of ex-governor Ellis Arnall who was eliminated by Lester Maddox according to the rules under which the Democratic primary and run-off were held.

This is legal, and the sincerity of the backers of this movement is admirable, though wishful and wistful.

But the logic by which Mr. Arnall, having failed before, is to win this time, escapes us.

In view of the way the political forces of Georgia are disposed, it seems obvious that every write-in vote for Mr. Arnall will help Mr. Maddox.

This is the opinion of many, and Charles Pou, political editor of The Journal, quoted a good authority in his Sun-

day column. The authority is Jesse Hill of Atlanta, a top Negro businessman, and a forceful, quiet and effective worker for the good of this city. Mr. Hill sees no logic in the write-in. He sees help for Mr. Maddox coming from it.

"There are many dedicated Georgians involved, including some of my close associates. A close analysis of the write-in, however, clearly indicates that there is no genuine and effective political alliance possible," he said.

Like many others, Mr. Hill is unwilling to die for either candidate. But he does believe that there is a choice for the Negro voter between Mr. Maddox and Mr. Callaway "which would be in the interest of the rank and file citizens."

On November 8 we decide the course we take for the next four years.

We have two candidates and the difference between them gradually is becoming apparent. It should be obvious eventually to those who now argue that there is no difference.

We also have the write-in movement, an exercise in futility and a classic case of feeding hay to a dead horse.

Atlanta Constitution, October 27, 1966

EUGENE PATTERSON

TWO FOR THE TEXTBOOKS

The current campaign for governor is generating two sidelights that will interest political scientists for some time to come. The first concerns the sudden suspicion by Lester Maddox that he, not Howard Callaway, is being hurt by the write-in vote.

Maddox himself, and not simply his supporters, is so uneasy about it that he has made personal efforts to get

the write-in idea stopped—a development that must perplex Callaway.

For Callaway has felt those who write in a name may be moderate and Negro voters who would never vote for Maddox—and whose votes are therefore being subtracted from his own total.

Maddox fears otherwise. He apparently has come to believe that he is the one who will be hurt most, because many of those who engage in a write-in may be loyalist, party-lining Democrats who would never vote for a Republican.

Evidently he feels a substantial number of these brass-bound Democrats may write in the name of a Democrat other than Maddox, while still being able to say they've voted a straight Democratic ticket, and thus subtract votes from his total, since Callaway never would have gotten them.

Only a post-election analysis of the vote can show which of the two nominees had cause for his jumpiness. But it is a measure of the wildness of this unpredictable campaign that each is convinced the other one is being helped by the write-in.

The other development that will contribute to political science of the region is the agitation of raw class conflict in the campaign.

Always harmful in the American body politic, the division is being sharply opened by Mr. Maddox with his poor-against-rich attack. "I know what it is to struggle and do without . . . It's no fault of a millionaire he doesn't understand people . . . I know how to say no to a wife who wants a new dress . . . not inherit millions . . . We've got a few with dirt under their fingernails, thank God . . . (the Wall Street crowd) is trying to prove they can buy the office of governor."

This kind of thing is usually off-limits in our every-man-a-king society. Moderates usually make a studied effort to bridge the class gap, not widen it. Southern populism tried to pit class against class but at least it was consistant in that it spoke for economic liberalism and poor Negroes as well as whites. The peculiarity that will interest political scientists is that Maddox speaks for neither, yet assails in rawest class-war terms the very class he joins in embracing Goldwaterism. For the bedfellows of 1964, this is the morning after.

Atlanta Journal, October 30, 1966

NEGROES SAY SEN. JOHNSON TRYING TO GET MADDOX VOTES

By Wayne Kelley

Two Atlanta Negro leaders Saturday charged Negro State Sen. Leroy Johnson is playing "partisan politics" in an effort to aid Democratic gubernatorial nominee Lester Maddox.

Jesse Hill, an insurance company executive, and Alderman Q. V. Williamson made the assertions after a disputed endorsement of the Ellis Arnall write-in movement by the Atlanta Negro Voters League.

Sen. Johnson read the endorsement statement Friday after it was approved by a vote of 45-10. Mr. Williamson, co-chairman of the voters league, claimed the resolution was passed after a meeting of the executive committee had adjourned.

"It seems to me that Sen. Johnson is trying to mislead the Negroes in the city of Atlanta," the Negro alderman stated Saturday.

"He is trying to develop a method to get them to vote for Lester Maddox without them knowing they are doing it."

Mr. Hill said he thought "moderates and Negro leaders" ought to sit down with both Mr. Maddox and Republican candidate Howard (Bo) Callaway to obtain "guarantees" on issues of importance to poor Negroes and white citizens.

Sen. Johnson said Friday that the Negro community could not support either Rep. Callaway or Mr. Maddox. He was joined in issuing the prepared statement by Negro State Rep. Ben Brown and J. D. Grier Jr.

Backing this position Saturday was Rev. Samuel Williams, president of the Atlanta NAACP.

"I am 295 per cent in favor of the write-in campaign," the Rev. Mr. Williams commented. "I think that Georgia needs at this time the influence of a write-in vote."

As for the position taken by Mr. Hill and Alderman Williamson, "I want to accuse them of being the unwitting agents of Bo Callaway," the NAACP officials said.

The split in the Negro leadership over the write-in campaign has forced former allies into opposing camps.

Mr. Hill, who often sees eye-to-eye with Sen. Johnson, said "I think Leroy and the others ought to be honest about this write-in effort.

"Any way you put it, the write-in has the net effect of campaigning for Maddox, and some Negroes know it. I'm not so sure they (write-in leaders) are not in communication with Mr. Maddox."

Mr. Hill noted a news story printed Wednesday in which both candidates declared they would not intervene in matters involving racial integration of professional and college sports in Georgia.

"Big league sports and the power structure have been shrewdies," Mr. Hill said. "They have obtained commitments involving the welfare of their interests.

"But who is looking out for the interests of the poor rural Negroes who do not have the guarantees of a good police

force and community relations that we have here in Atlanta?

"The leaders in this movement are middle-class Negro Democrats," Mr. Hill added. "Atlantans are leading this thing, but they are safe.

"What is going to happen in the hundreds of little hamlets in Georgia where the white leaders feel that the customs should be the same as they were, and if Negroes get out of hand they may do just what Lester Maddox did, go get a stick and a pistol?"

Mr. Hill claimed that "so-called moderates and Negro leaders have deserted their people. These men should sit down and extract promises from both candidates that this state is not going to go backwards."

Mr. Williamson, a long-time Republican, was among Negroes who opposed the write-in statement during a meeting Thursday night.

"I think Mr. Callaway and Mr. Maddox are so afraid of the political climate that neither one would say anything of importance on the subject of race relations," the Rev. Mr. Williams said.

"It is a question of being 'shot to death' or 'starved to death'," he continued. "I'd rather be shot. I hate the agony of being starved. It is a little more humiliating, too."

Atlanta Journal, November 1, 1966

MADDOX PREDICTS 50,000 WRITE-INS

By William O. Smith
Atlanta Journal Staff Writer

STATESBORO, Ga., Nov. 1—Lester Maddox said here Tuesday that the write-in campaign for Ellis Arnall "won't work" and he predicted it will net no more than 40 to 50 thousand votes.

He called leaders of the write-in effort "soreheads," and then he said, "They couldn't get in the front door and now they are trying to slip in the back door like a thief in the night, but it won't work."

Mr. Maddox appeared to be evidencing more and more concern over the Arnall write-in effort. He commented on this at some length Monday during an appearance before members of the Atlanta Press Club.

There, he revealed that he had been in touch with Arnall people in an effort to "get this thing eliminated." And he said he felt he would benefit more than his Republican opponent, Howard (Bo) Callaway, if the write-in movement were stopped.

Mr. Maddox, in a swing through South Georgia, where he reportedly is strongest among voters, spoke at a breakfast meeting here Tuesday morning. Later he was to visit Savannah and Brunswick.

He told the breakfast meeting that his opponent is "calling on the whole power structure of the national Republican Party to help him get elected."

He said the Republicans are "spending $500,000 a week" on Mr. Callaway's campaign but that "the people will say the office is not for sale on Nov. 8."

Addressing a wildly enthusiastic crowd at Dublin Monday night, Mr. Maddox said his opponent is "reaching for the governor's office like a child reaching for a toy" and really has his sights set on the Senate or the vice presidency.

Mr. Callaway doesn't know whether he's "a Democrat or a Republican . . . or a segregationist or integrationist . . . or whether he wants to run for Congress, the Senate or governor," Mr. Maddox charged.

"If he doesn't know where he stands, how does he expect the people to find out?" he asked.

Newsmen covering Mr. Maddox generally agreed that the crowd overflowing the Agriculture Building in Dublin was the noisiest and most enthusiastic of the campaign.

Estimates of the crowd—which came from a 10-county area—exceeded 2,000, and most observers agreed it was a larger turnout than Mr. Callaway's crowd in the same building on Saturday night.

Although the crowd had evangelical fervor for Mr. Maddox made and persons constantly yelled out to him, "Tell heckled newsmen as speaker after speaker denounced newsmen.

"You can't believe the newspapers," one man cried out loudly to raucous laughter. Another cried, "Write that down" when Mr. Maddox made a crowd-pleasing point.

The crowd applauded almost every statement Mr. Maddox made and persons constantly yelled out to him, "Tell 'em, Lester!" and "Go, Lester!"

Mr. Maddox said his opponent has been trying to find "Maddox Country" but that he'll be able to see it on Nov. 8.

Apparently getting more confident, Mr. Maddox said he expects 1,000,000 votes on Nov. 8 if the weather is good. He predicted he will get from 600,000 to 675,000 of them.

Mr. Maddox charged his opponent is "running against the people" and labeled Mr. Callaway the "greatest drop-out of all time."

He said Mr. Callaway "dropped out" of the Board of Regents, broke his promises and pledges and laughed at the people, and has been in, out, in the governor's race.

"He's dropped out of Congress now," he said.

Mr. Maddox said Mr. Callaway's "greatest drop-out will be Nov. 8" and said that after he is inaugurated in January, "he (Mr. Callaway) can drop in and visit me in the governor's office."

Before he spoke to the Dublin group, Mr. Maddox was presented with a check for $500 to help pay his campaign expenses. He quipped that he needed money and campaigned "four months before he got $1,000 in contributions," but then he asked permission to endorse the check to the Gracewood school for the mentally retarded.

In his speech, he promised to increase the state's mental health budget at least 50 per cent during his administration and launch a program to provide a mental health treatment center in every congressional district.

Atlanta Constitution, November 1, 1966

SANDERS COULD GET NEW TERM?

By Bill Shipp

Would you believe Carl Sanders could be governor for the next four years?

That is an outside possibility if neither Lester Maddox nor Howard Callaway gets a majority of votes in the Nov. 8 election, according to a highly knowledgeable source.

The state constitution now empowers the General Assembly to elect a governor from the two top candidates in the event no one gets a majority.

But this source believes that if no one gets a majority, there is a chance that the election would be declared "a failure" and the incumbent governor could remain in office.

Part of the thinking is based on a 1947 decision by the Georgia Supreme Court in the state's famous two-governor case involving Herman Talmadge, Ellis Arnall and M. E. Thompson.

The General Assembly had elected Herman Talmadge as governor.

By virtue of write-in votes he was one of the two top candidates left "in life" after his father's death. His father,

Eugene, had been elected, but died before he could take office.

The Supreme Court ruled that the election by the General Assembly was invalid.

It held that Lt. Gov. M. E. Thompson, who had replaced then governor Ellis Arnall upon Arnall's resignation, would move up to the governor's chair—not the choice of the General Assembly.

Here's a "what-if" situation put forth by one legal expert as a way for the incumbent to remain in the governor's office:

One candidate polls 49 per cent of the votes, another gets 42 per cent, and write-ins account for 9 per cent. That leaves nobody with a majority.

This would throw the election into the General Assembly which already has been held by the federal court to be so illegally constituted that it could not approve a proposed new constitution for being placed on the election ballot.

These experts hold that electing a governor would be of far greater import than placing a proposed constitution on the ballot, and, therefore, the courts would be inclined to rule that the General Assembly could not elect a governor.

That could mean that the election would be declared a failure, and the incumbent would remain in office, in accordance with past court decisions.

Or if the incumbent resigned, the governorship would go to the lieutenant governor.

This was just one of several possibilities mentioned if nobody gets a majority in next week's governor's race.

"One thing you can be certain of, if nobody gets a majority in the election there will be sheer chaos in the capitol," said the highly knowledgeable source.

Atlanta Journal, November 1, 1966

WRITE-IN A WASTE, WELTNER PROTESTS

By Wayne Kelley
Atlanta Journal Washington Correspondent

Retiring 5th District Rep. Charles L. Weltner has called the "Write-in Georgia" campaign "a lost cause" and urged that his supporters spend their time and money in behalf of local Democratic nominees for Congress instead.

Rep. Weltner, who resigned as the 5th District Democratic nominee rather than fulfill a party oath to support Lester Maddox for governor, made his views known during a reception at the American Motor Hotel Monday night.

Some 500 Weltner fans turned out to honor the congressman at the meeting, sponsored by the Fulton County Young Democrats.

HE WAS DIPLOMATIC during his speech, telling the crowd "it is the better part of political wisdom to regret the (races) you have lost, but put your time into the ones you can win."

The races which may yet be won, Rep. Weltner asserted, are those of Democratic congressional candidates Archie Lindsey in the 5th District, and James Mackay in the 4th.

The youthful congressman told his supporters he still intends to write in a candidate for governor, maybe "my father," but added he was against devoting time and money to any organized write-in effort.

FOR THOSE MEMBERS of the audience who thought they were hearing things, Rep. Weltner was much more direct in his comments following the official program.

Several persons wearing "Write-in For Ellis Arnall" badges, most of them women, stepped into a line of people shaking hands with the congressman to ask if he were against the write-in campaign.

"We've lost the governor's race," he told a group of three women. "I don't believe in lost causes."

A platinum blonde woman heatedly debated the point. "If you had said just one word for the write-in!" she argued. "We are working hard, we believe in it, we do have a chance."

"THAT'S YOUR opinion," replied the congressman with a smile, "but it is my opinion that it (the governor's race) is lost."

Rep. Weltner added that "what worries me is that the money and the effort may not go into these other campaigns which we can win."

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An attractive young dark-haired woman, whose name tag identified her as an officer of the Fulton Young Democrats, also complained bitterly.

"I have always applauded for you, but I didn't applaud you tonight," she said. "You stepped down as the nominee for Congress because of your principles. We're your constitutents and we believe in the write-in."

"I'll tell you," said Rep. Weltner with a grin, "the Ku Klux Klan gives me less trouble than you'all."

REP. WELTNER was the hero of local moderates when he stepped out of the general election Oct. 3 because "Lester Maddox represents everything I have fought" during his political career.

But Monday night some of the more vocal moderates were angry at Rep. Weltner—and he was not compromising with them any more than he did on the question of supporting Mr. Maddox.

"Listen, we lost that race," he told one woman who assailed him on the write-in issue, "don't you know that?"

"There comes a time when you lose, as well as a time when you win, and I think you have got to be man enough to recognize that fact," Rep. Weltner said.

DURING HIS SPEECH to the gathering in his honor, Congressman Weltner made it clear where he thought all the money and energies of his supporters should go. He opened his remarks with a glowing endorsement of Mr. Lindsey.

Rep. Weltner also added a good word for incumbent Democratic candidate Mackay in the 4th District.

And he added that "we can win in 1970 for governor."

BUT THOSE supporters who had hoped the congressman might endorse the write-in movement were disappointed.

The audience, which included a large number of Negroes and several elected Negro officials, gave Rep. Weltner warm, if not widely enthusiastic applause.

There were no little old ladies in tennis shoes. But the crowd included a large number of angry young ladies in sling-back heels.

Rep. Weltner's endorsement of Mr. Lindsey for Congress was emphatic. "If I have any credits due now, for any reason, I want to transfer them right now to Archie Lindsey," he said.

The congressman said he had no immediate ambition to return to his 5th District seat.

"I want to see Archie Lindsey elected to the 90th, 91st, 92nd, and 93rd Congress—and as long as he wants to serve this district in Washington," he said.

Atlanta Constitution, November 3, 1966

EUGENE PATTERSON

BACKGROUND TO CHAOS

If the most recently reported Quayle Poll figures are valid, a hectic outcome could conceivably lie ahead in the governor's race. As obtained by The Atlanta Journal's Charles Pou, the figures are reported to show Callaway 44 per cent (up 2 per cent from some three weeks ago); Maddox 27 per cent (down 7 per cent); write-in 7 per cent, and undecided 22 per cent.

Only five more shopping days remain until the election.

Thus undecided votes would seem still to hold the key to a majority for either Callaway or Maddox.

If Republican Howard Callaway's campaign remains static, or gains only 4 or 5 per cent of the undecided vote, and the rest of the undecided vote turns out to be a concealed Maddox vote, then both nominees would lack a majority.

In that case there would be no runoff election. Instead the choice of a governor would be attempted—by voice vote—in the General Assembly. The Georgia Constitution requires this in governor's races, as follows:

"If no person shall have a majority, then from the two persons having the highest number of votes, who shall be in life, and shall not decline an election . . . the General Assembly shall immediately elect a governor viva voce."

That could make for a considerable scene in the halls of the Legislature. Members would be predominately Democratic and bound, by the oath which Charles Weltner dramatized, to support the Democratic nominee, Maddox.

But on a voice vote—as opposed to a formal, recorded roll call vote—there would be no record for the folks back

home to check on how their legislator did vote and the pressures on him might be intense.

Maddox should be favored if the Maddox-Callaway choice were to be made by the General Assembly.

But there is talk of the possibility of legal action to complicate the issue further. It centers on the fact that the House of Representatives is still malapportioned, with rural areas remaining dominant; and because it was ruled to be illegally constituted, a federal court refused to let it submit a new state constitution to the voters two years ago. The legal question now raised being: In view of that, would the courts permit this General Assembly to elect a governor? Or has it gone far enough, on its court-sanctioned timetable of reapportionment, to be a legal body by now?

Others recall that the General Assembly tried to elect Herman Talmadge governor after his father, Gov. Eugene Talmadge, died before inauguration in 1947 and left Herman as the top living candidate (he had gotten a few write-in votes in the general election). The Georgia Supreme Court ruled Talmadge's election by the legislators invalid, declared the general election in failure and ordered the seating of the newly elected lieutenant governor, M. E. Thompson, as governor.

THE ATLANTA JOURNAL
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EDITORIALS 26 NOVEMBER 4, 1966

THE FULTON COUNTY DELEGATION

THE MOST interesting political development in Atlanta and Fulton County during the year has been the continued growth of the two-party system.

This has brought new vigor as well as new faces to local politics and has given the voter a wider choice. The Journal

has said before and says again that blind partisanship in the cause of one political party is stupid and makes for poor government.

Since the emergence of the new Republican party here during the Eisenhower years, we have urged voting for the better candidate, regardless of the party label.

So far this year this has resulted in The Journal's supporting Bo Callaway, a Republican, for governor; a Democrat, James A. Mackay, for Congress from the Fourth District, and Fletcher Thompson, a Republican, for Congress from the Fifth District.

In the races for General Assembly seats from DeKalb and Rockdale counties we also have made our recommendations with no regard for party affiliations.

Today we offer suggestions for some of the contested races for the General Assembly in Fulton County.

For the Senate:

34th District, GRIFFIN PATRICK JR.
35th District, FRANK E. COGGIN.
36th District, JACK L. STEPHENS.
37th District, JAMES P. WESBERRY JR.

In various House races for Fulton County seats we recommend:

121st District, H. HAMMOND STITH.
122nd District, YOUNG H. LONGINO.
123rd District:

Post 1, RODNEY M. COOK.
Post 2, RICHARD A. GUTHMAN, JR.

124th District, JOHN HOOD.
126th District, FRANK R. LEA.
128th District, TOM DILLON.
130th District, NICK G. LAMBROS.
133rd District, WILLIAM H. ALEXANDER.

136th District, RALPH M. MOORE.
138th Dist., DEVEREAUX McCLATCHEY.
139th District, HASKEW BRANTLEY.
140th District, K. V. R. TOWNSEND.

The next General Assembly is going to be one of the most important in years. It will have the job of reapportioning itself. There is the bare possibility that it will choose the next governor if there is no majority in Tuesday's election. There is the new urge for greater legislative independence plus the fact that the candidates for the governorship of both major parties are more likely to depend on legislative guidance than governors of the past.

This year voting is more important than before. The strong hands which guided us in the past, with legislative concurrence, seem to be weakening.

We may be in for a period of legislative initiative, rather than permissiveness. If so we need good legislators.

Atlanta Journal, November 4, 1966

WRITE-IN LAWYERS LOOK TO COURT TEST

By Steve Ball Jr.

If no candidate for governor receives a majority of votes Nov. 8, there will be legal action unless a run-off election is held, the lawyers' committee of Write-In, Georgia says.

In another write-in development, the officers of a 1,000-member local union announced the union endorses the write-in movement.

At a Thursday afternoon press conference, committee Chairman Joseph Jacobs cited the state Constitution, the new election code and a 1947 court decision which ordered

that the election of a governor by the General Assembly was invalid.

He also pointed out that the current General Assembly is malapportioned and said it would thus not have the authority to elect a governor.

Secretary of State Ben Fortson has said the election would be thrown to the General Assembly if no man gets a majority of the votes Nov. 8.

THE WRITE-IN group hopes its candidate, Ellis Arnall, will pull enough votes to finish first or second against Democrat Lester Maddox and Republican Howard (Bo) Callaway.

Mr. Jacobs also said it is the committee's understanding that if the Nov. 8 election is declared a failure, Gov. Sanders would continue to be governor until such time as there was a legal election.

IF NO CANDIDATE receives a majority Nov. 8 "and a runoff is not directed for Nov. 22, the legality of such failure to call a runoff will be challenged. If this challenge is not sustained by the courts, and the legislature attempts to pick the governor instead of the people voting, this shall also be challenged," Mr. Jacobs declared.

Meanwhile, Local 754, International Chemical Workers Union, unanimously recommended to union members that they "work for, support and write in the name of Ellis Arnold, governor."

The union is composed of employes at Scripto, Inc., here. "We urge each one of our members . . . that they write in Ellis Arnall, governor," president Verena Holt declared.

Atlanta Constitution, November 5, 1966

QUAYLE GOES FISHING

EUGENE PATTERSON

The Quayle Poll figures quoted here two mornings ago turned out to be somebody else's. Pollster Oliver Quayle telephoned from Mt. Vernon, N.Y., to say they weren't his. They were, in fact, figures compiled by Callaway headquarters. (The mistake was nobody's plot, just an inadvertent mixup.)

So the impeccably objective Mr. Quayle, who found Bo Callaway had 42 per cent of the vote and Lester Maddox 34 per cent last Oct. 22, does not vouch for the Callaway headquarters claim that Bo has gained 2 per cent and Lester has lost 12 per cent since then.

Now that the Republican authorship of these figures is straightened out, they become more interesting.

If Callaway could claim only 44 per cent of the vote a week before election day, his campaign obviously may be in trouble.

Moreover, the purported slippage of Maddox strength from 34 per cent to 22 per cent in a two-weeks period taxes the credulity so sharply that one must wonder if the sampling techniques of the Callaway pollsters might not have come inadvertently unglued.

To credit such a slippage would force us to believe that nearly one out of every three Maddox supporters has deserted him since the reliable Quayle Poll findings of two weeks ago. Whereas Maddox addicts are usually fiercer than that.

And from around the state come reports that Callaway is running like a dry creek in many areas where Maddox's pore boy campaign has taken hold.

All a nonpollster can do is guess. But the guess here is that Maddox is running better than the figures indicate. With so unpredictable a candidate, no result is predictable. But Callaway's continuing inability to get over the 50 per cent necessary for a candidate to win has already set some legislators maneuvering into survival gear, against the possibility that neither candidate will get a majority. Legislators would have to do the electing of the governor from the top two candidates, in that event.

Rep. Quimby Melton Jr. of Griffin, for instance, has already informed his Spalding County constituents how he would vote if the governor's race should have to be settled by the General Assembly.

His Democratic oath, he said, binds him to vote for the Democratic nominee "at the general election of Nov. 8, 1966." But that language releases him after the general election of Nov. 8, 1966, Melton said. And he would vote in the General Assembly, not by party, but in support of whichever candidate wins the vote of the people in his county on Nov. 8.

Because the General Assembly is still malapportioned, however, small (Maddox?) counties might have a majority if Melton's thinking were adopted generally. Others think Callaway might win the legislators over in an unrecorded, voice-vote showdown. Lawyers stand by, however, to challenge the legality of any kind of vote by the Legislature, on grounds it is illegally malapportioned.

Where it will all end, only Mr. Quayle can know, and he hasn't even been down here since Oct. 22.

The Atlanta Journal and Constitution, November 6, 1966

GEORGIA POLITICS

by CHARLES POU

LITTLE WRITING-IN FORESEEN AMONG RURAL NEGRO VOTERS

The Ellis Arnall write-in movement likely will get a fairly heavy vote from Negroes in Atlanta. That is, from those who successfully make the effort to write in the name of the former governor and have their votes counted. Actually, it is the opinion here the effect will be the same—count 'em or don't count 'em, Lester Maddox benefits.

In rural areas of the state, however, it is believed the formal write-in vote by Negroes will be minute. A South Georgia citizen, once actively interested in politics and still an interested observer, tells why.

"Down here," he said, "the Negroes are having no part of the write-in campaign because they are frightened by the possible outcome of this election. In Atlanta, Negroes have police protection. South Georgia Negroes are fearful that the election of Mr. Maddox may be interpreted as a license for the lower elements to take over."

The Democratic nominee has asserted repeatedly there will be law and order during his administration if he wins, and that he will run his own show. He says there will be justice for all.

Nevertheless there is fear, out where things can get sticky in a hurry and the unraveling of who done it may take years, if ever, once federal investigators move in.

It is certainly the hope here such fear is unjustified, if Mr. Maddox is the winner. But it is there, out in the boondocks, where petulance, vindictiveness, bitterness, attitude of a curse-upon-both-your-houses, thoughts of sweet re-

venge, and just plain stupidity cannot always be indulged in cozy surroundings.

Fear of the midnight rap on the door. . . . Nightriders. . . . The mean whine of a bullet.

Now COMMENT of a legislator from a small county: "My county is going for Maddox, and if this thing goes to the legislature, don't let anybody kid anybody about it—I am going to have to vote for Maddox. And it will be the county unit system all over again—and he'll win."

Those are no-name comments, because both men live in small counties. There are plenty who have spoken for the record, and some of the things they have said will be summarized once more. The writer also would like to make it plain again that his own objection is not to the idea of write-in—but to the for-
here) effort in behalf of loser Ellis Arnall.

REP. CHARLES WELTNER, a young man of style and class who has already expressed his objection to Mr. Maddox in dramatic fashion, spoke on the write-in subject this week. He told a packed audience of "Write-in Georgia" backers he considers the effort a lost cause. Mr. Weltner said he intends to write in a candidate for governor, maybe "my father," but added he was against devoting time and money to the organized movement.

To some present who wore "Arnall Write-In" buttons, who later wondered if they had heard him right, he was more specific.

"We've lost the governor's race," he told three ladies. "I don't believe in lost causes. . . ."

One in the group continued to argue, and he said with a grin, "I'll tell you, the Ku Klux Klan gives me less trouble than you'all."

JESSE HILL, a veteran worker in the Atlanta Negro movement here, eminently successful at increasing Negro registration, has said:

"I don't see how anybody could join in something to drain off Negro votes. . . . Many of those calling the shots in the Write-In Movement are middle class Negroes with high incomes. They are safe. We have a good police department, a good police chief. But in the little hamlets the election of Maddox by some could be taken in a peculiar way. . . ."

Mr. Hill has argued violently with some of the other leaders in the Negro community about the issue. He has since declared his support for Callaway, calling it "facing up to a nasty political problem."

A news story by Hank Johnson, reporter for The Red and Black, asserts in the current issue of the student newspaper at the University of Georgia:

"Dr. Brett Hawkins of the political science department warned voters that a write-in
Maddox governor and, in the process, smother the fledgling state Republican party. . . .

". . . Hawkins said that the candidates differ in education, their views on supporting federal laws and experience in governmental affairs. . . .

Peyton Hawes of Elbotton, a close loser in the 1962 race for lieutenant governor and urged by some to become a "write-in" candidate: "I told them a political race is very much like a baseball game . . . 'Some you win, some you lose, and some are rained out. I played by the rules and I lost by the rules.'"

A "fuzzy-minded" liberal, "against Maddox and hardly thrilled over Bo," but opposed to the Ellis Arnall write-in campaign: "The many weaknesses in the write-in idea will keep it from drawing a really representative number of moderates and liberals. But the danger is that politicians

may consider this small number of voters as the full force of liberal and moderate opinion in Georgia. . . ."

An Atlanta Rabbi two weeks ago endorsed the write-in movement. Now he is urging members of his congregation to leave it alone.

Still, the idea for the write-in campaign has its appeal, and the guess here is a fairly high vote will be produced by it—possibly enough to put the election of Georgia's next governor up to the Georgia legislature.

Mr. Maddox remains strong in the small counties, although a final prediction will be that Mr. Callaway will win in a close contest.

The backlash and Ellis Arnall backbite factors continue, but there are those who think they see slight gains for Callaway.

Atlanta Constitution, November 7, 1966

POLITICS AND PEOPLE

THE YEAR OF THE SWITCH AND CONFUSION

By Sam Hopkins
Constitution Political Editor

Most Georgia voters probably have never been so emotionally wrung out over a political race.

They have been forced to switch their allegiance over and over again as various factors would suddenly change the course of the campaign overnight.

Oldtimers say they have never seen such a confusing and exasperating election year.

But it will all be over Tuesday—maybe.

Many Democratic voters no doubt were supporting two or three candidates for governor during the course of the campaign. However, a good many likely are on their fourth candidate.

As an example, some started out with former Gov. Ernest Vandiver, who dropped out because of a heart condition. They then switched to State Sen. Jimmy Carter. Next they supported former Gov. Ellis Arnall when he got into a run-off with Lester Maddox, and now some of them will vote for Republican Howard (Bo) Callaway in the general election. There are many other variations.

It's enough to make a voter wonder what he really believes in.

But the result of the whole campaign probably is a good indication that the average voter is pretty flexible when it comes to deciding whom he will vote for and also that no candidate is indispensable, if anyone was ever in doubt.

This also has been the year for more political polls than the state has ever had to endure—filling station polls, "sophisticated" polls, newspaper and radio polls, straw polls, barbershop polls, reliable polls, unreliable polls and even non-existing polls which got published as the gospel truth.

Some observers now believe the race between Republican Bo Callaway and Democrat Lester Maddox will be so close that a write-in vote of at least 100,000 for Arnall would be enough to keep anyone from winning with a majority of the votes.

That eventuality opens the doors for all sorts of possibilities.

First, a suit likely would be filed to force a run-off election two weeks later to let the people decide the winner.

As it is now written in the state constitution the Legislature must decide the winner. And while we're on it, this law seems to be rather antiquated. The voters can decide primary winners in a run-off, so why not in the general election which, since the buildup of a two-party system, is much more important than the primary.

(Then there is the possibility that if the election is thrown into the Legislature the federal court will rule that it is too mal-apportioned to decide the outcome of a governor's race.

The court would not be treading new ground in such a case. Several years ago it ruled that a new state constitution passed in the General Assembly would not be submitted to voters in the general election because the Legislature was malapportioned.

And if the court so ruled?

Gov. Carl Sanders, who could remain governor until the next general election two years away, likely would say he would prefer not to serve further on a technicality and then Lt. Gov. George T. Smith could become acting governor.

That would be the irony of the decade, because Smith wanted very much to run for governor this year but decided on the No. 2 post because he couldn't get enough backing.

But this is all speculation. Who knows what the federal court might do, as they say out in the boondocks.

If one had to make a prediction—and one doesn't—it would have to be that no one will get a majority of the votes in the governor's election on Tuesday.

Atlanta Journal, November 7, 1966

NEGRO LEADERS SUPPORTING GOP

By William O. Smith and Steve Ball Jr.

Howard (Bo) Callaway and Lester Maddox were setting as fast a pace as ever on election-eve Monday as they campaigned for the last-minute votes that could swing a close race in their favor.

Instead of relaxing on the day before the election as most candidates do, both men planned a busy day of moving about the state.

Mr. Callaway, seeking to become the first Republican ever elected governor in Georgia, was to speak Monday afternoon in Waynesboro and move on to Savannah for a rally Monday night.

He then planned to fly to his home near Pine Mountain to spend the night and vote early Tuesday before returning to Atlanta to await results.

Mr. Maddox, who unexpectedly won the Democratic nomination, had an even busier day.

Mr. Maddox said Monday afternoon he doesn't think there is a white backlash, but merely people concerned with individual liberty. At a press conference in Chattanooga, the Democratic candidate for governor said he doesn't think the label "Mr. White Backlash" fits him. He said people support him because of his stand on individual rights.

Through geographical quirk, the Democratic nominee held what was to be his final press conference before the election just across the Georgia line. He flew into Chattanooga because it was the nearest airstop to Rossville, Ga., the first town in a series of handshaking appearances Monday afternoon.

Asked for a final prediction of Tuesday's outcome, Mr. Maddox said he believes a million or more persons will vote, and he will get from 58 to 62 per cent of their ballots.

At the press conference, Mr. Maddox reiterated that he will not support a third-party candidate in 1968 and if he cannot support the Democratic nominee for president, "I still won't jump the fence.

"I think we can do the best job within the Democratic party," he said.

He again expressed hope that the write-in movement will "fizzle out" and said he thinks a lot of those who plan to write in would likely just not vote if there were no formal write-in movement.

Mr. Maddox, saying he wanted to spend more time in North Georgia, traveled to Rossville, Calhoun and Dalton Monday afternoon.

His plans for election day begin at 9 a.m. when he will vote in Atlanta. Later, he said, "My wife and I are going to visit the Mansion again. It looks like it may be March before we move in."

The candidate said he will be at his headquarters at the Henry Grady Hotel in Atlanta most of Tuesday afternoon, then will go home to rest for a while and return to headquarters to await the results about 8 p.m.

ASKED ABOUT the strength of the Democratic party, Mr. Maddox said he believes that it is stronger in Georgia than ever before.

"Gov. Sanders is working strong for the nominees," he said. And, he continued, Sens. Richard B. Russell and Herman E. Talmadge are supporting the party, along with most state and local officeholders and just plain people at the grass-roots.

AS THEY neared the end of many months of campaigning, both candidates confidently predicted victory but many observers believe the race is neck-and-neck—accounting for the fast pace Monday.

Before leaving Atlanta on his last campaign jaunt, Mr. Callaway issued a statement saying "from all reports we are receiving on the eve of the election, it appears we shall win by a large majority."

Mr. Callaway appealed for votes from Democrats, independents and Republicans because he said he believes he is "best qualified by experience, temperament and responsibility."

"I feel that a vote for my opponent could lead towards chaotic conditions towards our state for the next four years," he said.

"I feel a write-in vote would be a vote for my opponent, or at best would lead only towards chaotic conditions for many months while the issue is contested in the General Assembly and the courts.

"In recent days, write-in supporters have been shifting to me after weighing, as one said, the prospects of four years under my opponent."

Travis Stewart, former executive secretary of the State Democratic party, predicted a Maddox victory by upward of a 100,000 vote margin.

The write-in campaign on behalf of former Gov. Ellis Arnall continued to befuddle experts.

Jesse Hill, prominent Negro businessman, said Monday he believes the write-in effort is "a lost cause" and urged Negroes to vote for Mr. Callaway.

He said he personally feels that "if Callaway is elected governor he will do more to improve the lot of the Georgia Negro than has been the case under the present governor, Carl Sanders."

He predicted a Maddox victory "could lead to bitter strife and terrible rioting over this state generated by a klan-type people who would interpret a Maddox victory as a license to turn back the clock in race relations."

Atlanta Postmaster George W. Camp said the Post Office Annex stayed open 10 hours overtime Saturday to handle the crush.

Atlanta Journal, November 7, 1966

STEPS TAKEN TO OBEY COURT IN ELECTION

By William B. Williams

Unusual legal factors surround Georgia's Tuesday general election and steps are being taken to prevent adverse legal action.

The factors came about when a three-judge federal court maintained jurisdiction in a suit regarding the election.

The suit contended that ballot secrecy was not being afforded in some cases of write-in voters.

Also, the suit claimed, oppressive regulations prevented illiterate voters from getting persons to assist them.

Also discussed, and noted by the court, was that variations in name spelling could possibly be used to prevent write-in candidates from getting all the votes cast for them.

The court formally ordered that a person could assist as many as 10 illiterate voters in the election and that a 1966 law limiting assistance to one illiterate is unconstitutional.

Since the court took jurisdiction over the case until after the election, many election irregularities which otherwise would be brought up in state court would fall under the jurisdiction of the three-judge court.

Appeals from a three-judge court are taken directly to the U.S. Supreme Court, thus bypassing the U.S. Circuit Court of Appeals.

Probably any violations of ballot secrecy, bars to assistance of illiterate voters and indiscriminate use of name spelling rulings would go before the federal court.

Behind scenes last week, officials worked quietly to see that all of the state's 159 county ordinaries got the word of the court's opinion.

A few ordinaries had stated off the record they did not believe they could change their methods unless formally ordered.

ALTHOUGH the ruling on the election was handed down informally Friday, Oct. 28, it was not until late last Friday afternoon before the state attorney general's office was able to get out certified copies of the court's judgment to ordinaries.

Before a letter had been sent informing ordinaries that the court had ruled on the voter assistance law, but this had no legal effect. Any or all ordinaries could have ignored the court.

Legal care, one official said, must be used in this election. Some believe legal efforts could be made to turn over the election.

One problem which would come up if no candidate receives a majority vote in the governor's race is a provision which allows the legislature to decide the election when there is no majority.

The lawyers' committee of Write-In, Georgia, said the state Constitution, the new election code and a 1947 court decision show the General Assembly cannot legally elect a governor.

Also, legal committee Chairman Joseph Jacobs said, the current malapportionment of the General Assembly would prohibit it from electing a governor, for such an election would not be related to popular vote.

THE WRITE-IN group hopes Ellis Arnall, beaten in the September Democratic primary, will come in first or second in the race.

Mr. Jacobs said he and his committee believe that if the Nov. 8 election is declared a failure, Gov. Sanders would continue in office until a legal election could be held.

Checks with ordinaries show that most, if not all, are trying to see that the letter and spirit of the law is followed Nov. 8.

Where Votomatics or machine voting is conducted, voters will get a write in ballot in an envelope. Regardless of whether they use it, they are required to turn the envelope back in. Otherwise, ballot secrecy would not be accomplished.

CHARLES MORGAN JR., attorney for the American Civil Liberties Union which brought the suit, said persons wishing to write in a candidate must use a mixed party ticket. If the straight ticket is used and a gubernatorial candidate is written in, the vote in the governor's race will not count, he said.

Also, he continued, the court has allowed that it is proper for poor-spelling voters to carry slips of paper with correct spelling into the polls.

Illiterates who want to get a person to assist them must take an affidavit in the polling place that they are illiterate and need someone to help them.

Atlanta Constitution, November 8, 1966

EUGENE PATTERSON

PREDICTION: VERY CLOSE

The only prediction that will be ventured here is that today's race for governor will be close. Something near 400,000 votes is likely to go to each nominee, which would mean the high man will be the one who can stretch higher above an already high base.

In such a circumstance, a relatively small write-in vote for a third candidate could keep either of the nominees from getting a majority.

In that event, the Legislature would pick one of the top two men as governor. But legal action has been threatened to prevent the Legislature from doing so, on grounds it is malapportioned.

In that case Gov. Carl Sanders might stay temporarily as governor, or resign—as he more than likely would—and let the newly elected lieutenant governor, George T. Smith take over until the courts and the Legislature settled on the new governor.

Whatever the outcome, both nominees must have been sobered a little by the cool and even hostile response their extreme conservatism drew outside the extreme conservative wing to which they belong politically.

Either one might be a better governor because of this experience.

Both have found how hard it is to fly on one wing. They have discovered the importance of broadening their approach to encompass more than the special ideas and interests they rode to prominence.

This cannot help but be an educative and moderating influence on both, even though the apparent closeness of their race is subjecting the state to a cliffhanger election that is utterly unpredictable.

Their own recognition of each other's strength was demonstrated most clearly in their decision to campaign right into election eve.

Democrat Lester Maddox's power base lay in that area of extreme conservatism which is preoccupied with race. His only hope of broadening it lay in persuading party-lining, never-vote-Republican Democrats to stay with the party even if they disagreed with his racial extremism.

Republican Howard Callaway's power base turned out to be middle-to-upper class conservatives, many of whom are the state's traditional Republicans, after Maddox took

all-out segregationist votes Callaway had once counted on. Callaway's only hope of broadening his narrowed base to victory size depended then upon turning around and hoping for moderate votes he hadn't expected to need, and he approached this task without much enthusiasm, largely by indicating he was more presentable than his opponent.

Maddox felt he was losing party-lining prospects to the write-in whereas Callaway felt he was losing moderates to it. Each tried to stop it, feeling it was hurting him worse than the other.

Now comes the decision. The people will dispose. Whichever may have broadened his base enough to win should be permanently chastened by the knowledge that his victory margin depended on votes reluctantly given.

Atlanta Constitution, November 10, 1966

SMITH SAYS ASSEMBLY TO DECIDE

By Joe Brown
Constitution Staff Writer

COLUMBUS, Ga.—Lt. Gov.-elect George T. Smith predicted Wednesday that the federal courts will allow the General Assembly to choose Georgia's next governor.

"The court has ruled that the Georgia House and Senate are legally apportioned to attend to business of the state until May 1 of next year," Smith said here and in Macon on the first day of the Georgia State Chamber of Commerce's Pre-Legislative Forum.

Smith, touring with spokesmen for Democratic nominee Lester Maddox and for Republican Howard H. (Bo) Callaway, told the crowd of about 150 that the major issues facing the next session of the General Assembly are a $1.5 billion appropriation bill and reapportionment.

The lion's share of the record money bill, he said, will probably go to financing of education.

Rep. Mac Barber of Commerce, Maddox's spokesman, said in Macon that the Democratic candidate has pledged to give beginning teachers a $1,200 a year raise starting July 1, to take steps to reduce the teacher-pupil ratio in the first grade and to institute a statewide kindergarten program.

Barber, immediate past president of the Georgia School Boards Association, said Maddox has pledged that he will not refuse any federal aid to education nor close any schools.

He has also promised, said Barber, not to interfere with the curricula of the state's schools nor infringe on academic freedom in the University system.

If there is any fight against the federal school desegregation guidelines, Barber said, he has been assured that it would either be through the courts or by Georgia's congressmen.

"Under no circumstances will there be any interference except through legal means," Barber said.

Callaway's spokesman, Sen. Oliver Bateman of Macon, told the group that the Republican would accelerate the state's interstate highway program.

He has also pledged, said Bateman, that his administration would "neither be Republican nor Democratic, but a Georgia administration."

The Pine Mountain congressman would draw his leaders from the ranks of Democrats, Republicans and independents, Bateman said.

Asked about the write-in vote for Ellis Arnall, which apparently has thrown the election into the General Assembly, Bateman said:

"It proves to me that there are still people in Georgia who had rather tear down than build."

Exhibit B to Motion for Preliminary Injunction

THE ATLANTA CONSTITUTION

For 99 Years The South's Standard Newspaper

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CLOSE-UP

IF NO WRITE-INS, THEN WHAT?

If write-ins are barred in the runoff election for governor that almost surely will be held, don't bet too soon where the Ellis Arnall people will go.

A great number, perhaps most would go fishing. Negroes in particular would find no choice at all. There was already a considerable drop in total voting between the Democratic runoff and the general election in Atlanta's Negro precincts, even with the alternative of a write-in available. Among those who did vote Nov. 8, the write-in vote was high.

But what about those who do decide that if a choice must be made, they may as well participate in it?

They already have concluded that neither Bo Callaway nor Lester Maddox is palatable; otherwise, they would have voted for one or the other. So picking one over the other now will, for them, require some tortuous reasoning . . .

And no little emotion, since they are on average no more immune to visceral reactions than any other group of voters.

Fear of Maddox and revulsion at his stands on race and "patriotism" are of course strong reasons for their voting against him.

But there are newer sets of resentments which may lead many to vote against Callaway.

Perhaps most potent is resentment at having the Democratic primary "stolen" from them—not by Maddox people,

but by Callaway people. There was strong evidence of massive Republican crossovers at the time of the runoff. But the results of last week's general election balloting without question confirm the crossover.

In 55 counties, Lester Maddox's total was less in the general election than in the runoff—even though the total vote in those counties was higher. These naked crossovers come to about 25,000. It's impossible to be sure how many more are masked by the greater total.

In Atlanta's Eighth Ward alone, there were 1,693 naked crossovers. There were another 1,438 in Sandy Springs. There were 212 in the Medlock box in DeKalb alone.

Mr. Callaway further antagonized the moderates and liberals by his failure to make any gesture in their political direction. His polls erroneously said he didn't need them; he expected to win by about 54 per cent of the total; so he sat tight.

And just last Friday, his attitude toward write-ins in any runoff showed his lack of political sagacity. His people wanted to bar write-ins. Lester Maddox astutely had something nice to say about the right to write-in.

Mr. Callaway apparently believes that if there is no write-in option, the votes will come to him. He'd better be careful.

BRUCE GALPIN.

Exhibit C to Motion for Preliminary Injunction

Atlanta Constitution, November 9, 1966

ARNALL BACKERS CHARGE ERRORS, PLAN U.S. SUIT

By Bill Shipp

Write-in, Georgia officials prepared to take the state's election results to federal court Wednesday.

A spokesman said the group backing the write-in candidacy of Ellis Arnall is contemplating filing suit immediately to have all the ballot boxes in the state impounded as a result of "a flood of irregularities" in voting reported over the state.

And the Southern director of the American Civil Liberties Union said he was studying the possibility of seeking contempt of court action against several county ordinaries.

Studies Complaints

Attorney Charles Morgan Jr. of the ACLU said Tuesday night he was "studying hundreds of complaints" relating to a federal court case brought by the ACLU to guarantee that write-in voters were assured of the right of secret ballots. Morgan said it appeared "that more than one of the ordinaries may not have abided" by the order in the case.

Meanwhile, Secretary of State Ben W. Fortson said he had received numerous reports of irregularities.

There were reports that poll managers in some precincts were asking voters if they had written in and were discarding the special write-in envelopes of those who said they had not.

Write-in Query

When a reporter voted at populous Fair Oaks in Cobb County, he took a write-in envelope from the counter with

his Votomatic card. After leaving the booth to deposit the card and envelope a poll worker asked, "Did you write-in?"

When he said he did, he was told to place his ballot in a separate box.

There were other reported instances of polling places running out of write-in forms. The write-in spokesman said there were reports from Newnan that poll managers were refusing to allow persons to have help in the polls unless they were illiterate.

Refused Help

About 400 literate persons were milling around the polls at one point because they had been refused help, the spokesman said.

The federal court last week overturned a Georgia law dictating that only one person could help one other person at the polls. They ruled that one person could help 10 others, but did not limit the help to illiterates.

Fortson said his office had been flooded with calls all day.

Ignore Order?

"Everybody is overlooking the directive of the federal court," Fortson said. "There seems to be a lot of confusion."

Hosea Williams, an aide to Dr. Martin Luther King and one of the driving forces behind the write-in campaign, charged that "they aren't counting half our votes."

"We've got reports that in some counties they just aren't counting the write-ins at all," he said.

Write-in Hope

Although it appeared late Tuesday that the write-ins would not keep the winning gubernatorial candidate from

getting a majority of the votes, it was almost a certainty that Georgia's election outcome will be in the breast of the federal court by the end of the week.

The write-ins had hoped to keep any candidate from getting a majority. Under Georgia law, the election would then be thrown into the legislature and that body would pick the winner. But the write-in backers also planned to challenge this, on the grounds that the legislature is malapportioned.

Atlanta Constitution, November 9, 1966

ARMDILL OR ARNADE OR ARNELL?

His proud parents christened him Ellis Gibbs Arnall 59 years ago.

But it will take a federal judge and all his wisdom to say whether the East Point voter had in mind the former governor when he wrote in the name of "Armdill" in Tuesday election.

And who is Arnade? Did another East Point voter have in mind Ellis Gibbs or was he casting his ballot for his best friend, a chap named Arnade?

Then there's Ellis Arnold. That citizen picked up seven votes in East Point, 26 in Precinct 1-E and 5 in 4-D.

And to add to the confusion, write-ins were filled in for the names of Arnell, Arour (he got 13 votes in 1-E) and Harner (a chap who picked up support from 10 voters in 1-E).

To add to the confusion 21 voters in 1-E correctly spelled Ellis Arnall's name but forgot to signify what office they want him to fill. Governor? Judge of Superior Court? House of Representatives, 123rd District (Post 1)?

Maybe a federal judge will have the answer.